

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

MARILYN KEEPSEAGLE, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 1:99CV03119
	)	(EGS)
v.	)	
	)	
TOM VILSACK, Secretary, United States Department of Agriculture,	)	Judge: Emmet G. Sullivan
	)	Magistrate Judge: Alan Kay
Defendant.	)	

**STATUS REPORT**

**I. INTRODUCTION**

The plaintiffs hereby report on the status of the claims process conducted pursuant to the Settlement Agreement entered in this case and propose the disposition of the unclaimed settlement funds pursuant to the *cy pres* provision of the Agreement.

As set forth more fully below, with the claims process now concluded, it is clear that the amount of settlement funds remaining unclaimed far exceeds the amount that the parties anticipated at the time the Agreement was negotiated and executed. The wholly unexpected amount of settlement funds that remain unclaimed creates an unprecedented opportunity the parties had not foreseen when they drafted the *cy pres* provision of the Settlement Agreement. Instead of distributing all remaining settlement funds in equal amounts to scores of Native American non-profit organizations, as the present terms of the *cy pres* provision would require, the plaintiffs intend to recommend to the Court that the *cy pres* provision be amended to permit endowment of a foundation that would be charged with disbursing the interest accruing on these funds to serve Native American farmers and ranchers for generations to come. Creation of a

foundation managed by Native American leaders and serving the needs of farmers and ranchers in Indian Country, both needs that currently exist and those that cannot be presently foreseen, would permit the coordinated and strategic use of these funds for the indefinite future and, with a professional grant apparatus, ensure the funds are used consistent with parameters approved by the Court. Accordingly, the unexpected magnitude of the unclaimed settlement funds creates the opportunity to endow the largest philanthropic organization devoted to serving Native Americans.

## **II. REPORT ON STATUS OF MONETARY RELIEF PAID PURSUANT TO SETTLEMENT AGREEMENT**

### **A. Amounts Awarded and Paid from the Settlement Fund**

Pursuant to Section VII.F of the Settlement Agreement, a Settlement Fund was created and \$680,000,000 deposited.<sup>1</sup>

There were a total of 3587 successful Track A claims to which were awarded a total of \$224,187,500 (which included \$179,350,000 in direct payments and \$44,837,500 in payments to the IRS). A total of 14 successful Track B claimants were paid a total of \$3,364,647.

In addition, the Court granted awards of attorneys' fees and costs in the amount of \$60,800,000 and service awards to the named plaintiffs totaling \$950,000.

### **B. Debt Relief**

Pursuant to section IX.E of the Settlement Agreement, the USDA agreed to extinguish outstanding debt up to \$80 Million that was owed to the FSA by class members who prevailed either on a Track A or Track B claim. The amount of debt forgiven totaled \$59,260,840.32,

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<sup>1</sup> As those funds were not subject to distribution until the claims process concluded, class counsel deposited them in a Qualified Settlement Fund and invested them in a manner consistent with their earlier report to the Court. After taxes, costs of administration and other similar costs have been paid, the balance will be added to the *cy pres* fund.

which was paid by the USDA from a separate fund.

Payments to the IRS to offset the taxes owed for debt forgiveness, in the total amount of \$10,697,141.11, were paid from the Settlement Fund.

C. Status of Disbursements from Settlement Fund

Of the funds payable to class members who prevailed on claims submitted, all checks issued to Track B claimants have been cashed and nearly all of the Track A award checks have also been cashed. However, there are 18 checks, totaling \$900,000 which have not been cashed yet, and there are 41 estate claims, with awards totaling \$2,050,000, which have not yet been issued checks, as they have not yet submitted the required proof of legal representation. Nearly all of the tax payments have been transmitted to the IRS, except for \$512,500 which will be sent to the IRS once the open estate claims are resolved so that those payments are issued.

In summary, the following deductions have been or will be made from the Settlement Fund:

Track A Cash Awards	\$179,350,000.00
Track A IRS Payments	\$44,837,500.00
Track B Cash Awards	\$3,364,647.00
Debt Forgiveness IRS Payments	\$10,697,141.11
Service Awards to Class Reps	\$950,000.00
Attorneys' Fees and costs	\$60,800,000.00
<b>TOTAL</b>	<b>\$299,999,288.11</b>

Of the total monies deposited into the Settlement Fund, therefore, \$380,000,711.89 remains undisbursed at this time. There are checks drawn on the Settlement Fund, or to be drawn pending estate resolutions, which remained unredeemed in the amount of \$3,462,500. Some or all of those funds may be subject to disbursement of the *cy pres* provision of the Settlement Agreement in the event they remain unclaimed.

### III. CY PRES

#### A. Background

The amount available for distribution under the *cy pres* provision of the Settlement Agreement is approximately \$380 million.

Pursuant to Section IX.F.7 of the Settlement Agreement, the Claims Administrator will transmit those remaining monies into the Cy Pres Fund for a future distribution to Cy Pres Beneficiaries recommended by Class Counsel and approved by the Court. Under the Settlement Agreement, the Claims Administrator may not “direct any leftover funds to the Cy Pres Fund,” and Class Counsel may not “designate Cy Pres Beneficiaries” until the time has passed for all estates to identify a legal representative and receive their funds. Settlement Agreement § IX.F.7. That date ranges from August 23 to October 30, 2013, depending on when an estate was notified of the outcome of their claim. Moreover, at that time, estate claimants may request an extension by submitting proof that probate of such estates is pending, and those funds will be set aside to pay the estate claims when the probate is resolved. All other funds will become available for *cy pres* distribution.

The parties did not contemplate that the funds available for *cy pres* distribution would be of this order of magnitude. Indeed, the parties contemplated that no more than several million dollars in settlement funds would be unclaimed.<sup>2</sup> The enormous difference in magnitude

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<sup>2</sup> When the parties entered into the Settlement Agreement in October 2010, they expected that over ten thousand class members would likely file Track A or B claims, and that most of those claims would be successful. These expectations were based on numerous factors, including the federal government’s estimates of Native American farmers and ranchers and experience with the *Pigford* litigation in which tens of thousands of black farmers filed claims under a similar claims process. Given that the most recent Census of Agriculture reports that there are more than 61,000 Native American farm or ranch operations in the United States and given that an even higher number of Native Americans farmed or ranched since 1981, the parties expected that at least 10,000 Native American farmers or ranchers would file claims, and enough would be successful such that all or nearly all of the available damages would be distributed.

between the amount of undistributed funds expected and the amount actually available for distribution render some of the conditions for *cy pres* distribution impractical and create a unique opportunity to devote the undisbursed funds to address greater, unmet needs of Native American farmers and ranchers than the parties had ever conceived possible.<sup>3</sup> In order to accommodate these concerns and to exploit the enormous potential that this opportunity presents, the plaintiffs concluded that some terms of the Settlement Agreement should be amended and approached the

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U.S. Census of Agriculture, Table 55, Selected Farm Characteristics by Race (2007). Indeed, the Settlement Agreement contemplated that the total claims might exceed the available fund, and thus provided that if the damages available to successful Track A and Track B claimants were not sufficient to award the maximum amount allowed for each claim, then successful claimants would have received a *pro rata* share of damages awardable for their Track A or Track B claims. Settlement Agreement § IX.F.

<sup>3</sup> The number of claims made was fewer than expected for several reasons. First, this case addressed conduct arising between 1981 and 1999; many of the farmers and ranchers who were otherwise eligible to participate in the settlement were deceased by the time the claims process began in mid-2011. While heirs could file claims on behalf of the estate of the deceased class member, in many instances the heirs simply lacked sufficient information in order to complete the claim form. Second, while the damages were negotiated based upon the total impact of discrimination on Native American farmers and ranchers, only individuals who could establish they actually had made a complaint of discrimination were permitted to participate in the settlement. Some Native American farmer and ranchers who believed they had been denied loans for discriminatory reasons regarded it futile to lodge complaints with the USDA. These two issues arose often in the claims-assistance meetings held by class counsel and in telephone contacts with potential claimants.

A third factor that likely suppressed the number of claims submitted was the USDA's historic failure to conduct sufficient outreach to much of the Native American farming and ranching community. In some areas, there was so little information disseminated about the availability of USDA farm loans, that otherwise eligible Native Americans never applied or attempted to apply for loans. While they were included in the expert analysis of people eligible for loans, such individuals were not eligible actually to make a claim under the terms of the settlement agreement. The parties' reliance on census data to estimate the number of Native Americans who may have been improperly denied loans was the result of the USDA's failure to retain applications from applicants who were denied loans. Accordingly, the parties were unable to rely on applicant flow data to assess the actual proportions of Native Americans who sought and were denied and granted loans.

Fourth, there were some potential claimants who were so distrustful of the federal government for historic reasons, that they did not have confidence in the validity of the settlement process, and thus did not submit claims.

USDA last year about specific changes to the Agreement that may be warranted. It remains unclear to the plaintiffs whether the USDA will agree to the changes they have proposed.<sup>4</sup> As the plaintiffs are obliged nonetheless to advise the Court how they propose to proceed with the *cy pres* funds at this juncture, this status report follows. The parties may benefit from a status conference to assist the parties in bringing this matter to a conclusion.

The Settlement Agreement defined a *Cy Pres* Beneficiary as:

any non-profit organization, other than a law firm, legal services entity, or educational institution, that has provided agricultural, business assistance, or advocacy services to Native American farmers between 1981 and the Execution Date [Oct. 2010] that will be proposed by Class Counsel and approved by the Court.

Settlement Agreement § II.I. The Agreement further provided that:

Class Counsel may then designate *Cy Pres* Beneficiaries to receive equal shares of the *Cy Pres* Fund. The Claims Administrator shall send to each Beneficiary, via first class mail, postage prepaid, a check in the amount of the Beneficiary's share of the *Cy Pres* Fund. Designations shall be for the benefit of Native American farmers and ranchers, upon recommendations by Class Counsel and approval by the Court.

Settlement Agreement § IX.F.7.

B. The Amount of Settlement Funds Remaining Unclaimed Make them Ill-suited to Kind of Distribution Currently Required by the *Cy Pres* Provision

In light of the unexpectedly large amount of settlement funds that remain unclaimed, the

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<sup>4</sup> While the plaintiffs have sought USDA's agreement to the modest revisions to the *cy pres* provisions of the Settlement Agreement, the difference in the amounts of funds available for distribution from those originally contemplated provides a change in circumstances pursuant to Rule 60(b)(5), Fed. R. Civ. P. for the Court to modify the *cy pres* provision, over which the Court retained jurisdiction. Settlement Agreement § IX.F.7 (stating that *cy pres* "[d]esignations shall be for the benefit of Native American farmers and ranchers, upon recommendations by Class Counsel and approval by the Court") (emphasis added); *id.* § XIII (stating that "[t]he Court shall retain jurisdiction over this action to supervise the distribution of the [Settlement] Fund," which necessarily includes the funds available for any *cy pres* distribution); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384-85 (1992); *Env'tl. Def. Fund, Inc. v. Costle*, 636 F.2d 1229, 1240 (D.C. Cir. 1980); *Williams v. Butz*, 843 F.2d 1335, 1336-37 (11th Cir. 1988).

current terms of the *cy pres* provision poorly serve the interests of Native American farmers and ranchers for several reasons:

1. The Settlement Agreement, in its present form, requires distribution of *cy pres* funds in equal amounts to each recipient. Where the amounts distributed are modest in size, this requirement was a sound provision. The larger amount of funds available for distribution, however, creates the opportunity to award *cy pres* grants in amounts that vary with the capacity of the recipient organization, the size of the population to be served, and the demands of the proposal being funded, an option presently foreclosed by the Agreement.
2. The Agreement limits distribution of the funds to organizations established before the Execution Date of the Agreement. Accordingly, it would preclude use of any funds to develop new organizations to serve underserved areas in the country.
3. The Settlement Agreement, in its present form, makes no provision for the systematic evaluation of applications for *cy pres* funds submitted by potential recipients nor provision for follow-up with recipients to ensure funds disbursed were used properly. Had the amount of funds available for distribution been as modest as the parties originally contemplated, no such accountability provisions would have been necessary. The larger amount of funds available for distribution, however, creates the need for professional evaluations of the fund requests and the use the recipients made of the funds.
4. The Agreement, in its present form, would lead to the immediate distribution of the entire balance of unclaimed funds. As such, funds would be distributed in amounts that may not be commensurate with the need demonstrated by some or many of the recipients. And, no funds would remain available to address needs of Native American farmers and ranchers in the future.
5. The Agreement currently provides that class counsel, with approval by the Court, will select the *cy pres* recipients. While that selection process reasonably allowed class counsel, in consultation with the named plaintiffs, to identify worthy *cy pres* recipients without formal solicitation of proposals or review of how modest amounts of funds disbursed were used, it is ill-suited to the distribution of the amount of unclaimed funds presently available. Modification of the distribution process would permit creation of an organized process for soliciting proposals for *cy pres* funds and empower Native Americans to oversee the choice of *cy pres* recipients.

In sum, while the *cy pres* terms of the Settlement Agreement were reasonably designed to

provide for distribution of modest amounts of unclaimed funds, the funds actually remaining unclaimed are many times larger than the parties foresaw. As a consequence, members of the class would benefit from modification of several terms of the *cy pres* provision and creates an opportunity to disburse the funds in a different manner than the parties had contemplated with the smaller amount of funds they expected to remain.

C. Creation of A Foundation Would Best Serve the Interests of Native American Farmers and Ranchers

Because of the substantial size of the *cy pres* fund, there is an unforeseen opportunity to use the *cy pres* funds as an endowment which could be expected to generate over \$30 million each year which could fund non-profit organizations serving the needs of Native American farmers and ranchers.<sup>5</sup> Rather than a one-time distribution, use of the fund to establish an endowment would provide long-term, stable financial support to the institutions that provide educational, technical, and business development services to Native American farmers and ranchers. This presents the opportunity for a historic change in the educational and technical resources available to Native American farmers and ranchers. An endowed foundation would have a transformational impact on both the current and future generations of Native American farmers and ranchers.

After extensive discussions with the Class Representatives and leaders within Indian Country, Plaintiffs intend to propose that the Settlement Agreement be modified to permit establishment of a new foundation endowed by the \$380 million in unclaimed settlement funds,

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<sup>5</sup> As a point of comparison, the top ten grant-making organizations in the United States contribute less than \$41 million annually to organizations serving Native Americans and, of course, only a small fraction of those funds are likely to have funded programs related to agriculture. The Foundation Center, *Foundation Funding for Native American Issues and Peoples*, 1, 2 (2011), [http://foundationcenter.org/gainknowledge/research/pdf/ff\\_nativeamerican.pdf](http://foundationcenter.org/gainknowledge/research/pdf/ff_nativeamerican.pdf).

and authorized to distribute interest accrued on the settlement funds annually to eligible *cy pres* recipients. The Plaintiffs will further propose that the foundation be overseen by Native Americans familiar with the farming and ranching needs of this community and it adopt a grant-making apparatus for soliciting and evaluating requests for *cy pres* distributions and for ensuring the funds disbursed are properly expended. Moreover, the plaintiffs intend to propose the requirement the *cy pres* funds be disbursed in equal amounts be eliminated and that the population of non-profit organizations eligible to receive *cy pres* funds be expanded to include organizations founded after the Agreement Execution date and educational institutions, such as tribal colleges.

Key characteristics of such a foundation would include:

1. A structure under U.S. tax law which operates pursuant to the best practices of the philanthropic community.
2. The organization would be endowed with the balance of unclaimed settlement funds and exist in perpetuity.
3. The *cy pres* funds used to endow the foundation would be managed by investment advisors initially selected by Class Counsel, and later by the organization's Board, who would pursue financial investment and growth strategies consistent with the best practices of management of endowment funds in the philanthropic community.
4. The foundation would operate under the direction of a Board of Directors comprised of leaders of the Native American farming and ranching community, who would be recommended by Class Counsel and approved by the Court. The size of the Board, the tenure of the Directors, and the process by which Directors are appointed or elected would be consistent with the best practices of the philanthropic community. The Board of Directors would make all decisions on the organization's annual budget, including the hiring of appropriate executive and administrative staff and a decision on the physical location where the foundation would be located.<sup>6</sup>

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<sup>6</sup> Unless the Court would otherwise prefer, class counsel anticipate they would play no role in the Foundation after it is established.

5. The foundation would make grants to not-for-profit organizations that will provide agricultural, business assistance, technical assistance, or advocacy services for the benefit of Native American farmers and ranchers.
6. The cost associated with establishing the foundation would be defrayed by interest from the investment of the unclaimed settlement funds.

D. The Next Steps in This Process

Ideally, the next step in the process would be for the parties to propose to the Court jointly those modest revisions to the Settlement Agreement that would permit creation of the foundation described above. The plaintiffs estimate that a foundation can be launched within six months of approval of the Settlement Agreement modifications.

While not as well-suited to the interests of the Native American community, the Settlement Agreement in its present form could support creation of a foundation. This could be accomplished by disbursing the entirety of the unclaimed funds to a single organization that satisfies the existing *cy pres* requirements along with a binding commitment from that recipient to use the funds to establish a foundation within the existing organization, with its own advisory board. This subsidiary foundation could then re-grant funds to other non-profit organizations. The drawbacks to this approach, however, lead Plaintiffs to strongly recommend creation of a stand-alone foundation and the modest Agreement revisions proposed above. First, Class Counsel want to be transparent about the use of the *cy pres* funds. Second, creation of a stand-alone foundation will ensure appropriate oversight of its creation, its mission and the appointment of its initial board of directors, enhancing public confidence in the operations of the new foundation. Third, creation of a stand-alone foundation will ensure it can operate fully independent of any existing entities, unencumbered by either past ties or past disputes that an already existing organization may have with other organizations in Indian Country.

E. There is Widespread Support in Indian Country for a Foundation

There is widespread support among representative organizations throughout Indian Country for using the unclaimed settlement funds to endow a foundation in order to provide long-term support for Native American farmers and ranchers. Letters of support and resolutions are attached hereto from (a) the Intertribal Agricultural Council (IAC) (Ex. 1); (b) the National Congress of American Indians (Ex. 2); (c) the Coalition of Large Tribes (Ex. 3); (d) the Great Plains Tribal Chairmen's Association (Ex. 4); and (e) the Standing Rock Sioux Tribal Council (Ex. 5).

These organizations are largely representative of the population the *cy pres* funds are designed to benefit. For example, the Intertribal Agricultural Council (IAC) was founded in 1987 to promote the conservation, development and use of agricultural resources for the betterment of Native Americans. See <http://www.indianaglink.com/index.html>. Currently, the USDA contracts with the IAC to provide the technical assistance to Native American farmers and ranchers called for under the Settlement Agreement. The IAC member tribes voted unanimously to support the creation of a foundation to administer the *cy pres* funds. See Ex. 1.

The National Congress of American Indians, founded in 1944, is the oldest and largest American Indian and Alaska Native organization, dedicated to serving the broad interests of tribal governments and Native communities. See <http://www.ncai.org/>. A resolution endorsing creation of a foundation to oversee the unclaimed settlement funds is attached. See Ex. 2.

The Coalition of Large Tribes (COLT) was formally established in April 2011, and includes among its member tribes the Mandan, Hidatsa and Arikara Nations, the Oglala Sioux Tribe, the Crow Tribe, the Navajo Nation, the Sisseton Wahpeton Sioux Tribe, the Blackfeet Tribe of Montana, the Rosebud Sioux Tribe, Northern Ute, Shoshone Bannock, Colville Confederated Tribes, Ft. Belknap and the Cheyenne River Sioux Tribe. See Ex. 3. A resolution

expressing support for creation of a foundation is attached. *See* Ex. 3.

The Great Plains Tribal Chairman's Association is composed of sixteen elected chairs and presidents of tribes that are located within the Great Plains Region of the Bureau of Indian Affairs (North Dakota, South Dakota, Nebraska). *See* Ex. 4. A resolution expressing support for creation of a foundation is attached. *See* Ex. 4.

#### IV. CONCLUSION

The unanticipated size of the unclaimed settlement funds presents the parties with changed circumstances that must be addressed in order to ensure that the purposes of the settlement, and in particular, the purpose of the *cy pres* provision, are best effectuated. After substantial thought, extensive discussions with the Class Representatives and with leaders throughout Indian Country, and lengthy talks with counsel for USDA, Class Counsel concluded that an endowed foundation is the best mechanism to fulfill the purposes of the *cy pres* provision of the settlement agreement. Plaintiffs request that the Court hold a status conference to discuss Plaintiffs' proposal and the steps necessary to effectuate it.

August 30, 2013

By /s/ Joseph M. Sellers  
Joseph M. Sellers, Bar No. 318410  
Christine E. Webber, Bar No. 439368  
Peter Romer-Friedman, Bar No. 993376  
COHEN MILSTEIN SELLERS &  
TOLL PLLC  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005  
Telephone: (202) 408-4600  
Facsimile: (202) 408-4699

Respectfully submitted,

Paul M. Smith, Bar No. 358870  
Katherine A. Fallow, Bar No. 462002  
Jessica Ring Amunson, Bar No. 497223  
Carrie F. Apfel, Bar No.  
JENNER & BLOCK LLP  
1099 New York Ave., N.W.  
Suite 900  
Washington, DC 20001-4412  
Telephone: (202) 639-6000  
Facsimile: (202) 639-6066

David J. Frantz, Bar No. 202853  
CONLON, FRANTZ & PHELAN  
1818 N Street, N.W.  
Suite 400  
Washington, DC 20036-2477  
Telephone: (202) 331-7050  
Facsimile: (202) 331-9306

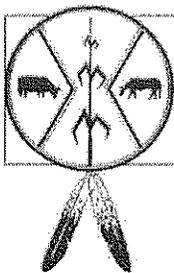
Sarah Vogel  
222 N. 4th St.  
Bismarck, ND 58501  
Telephone: (701) 221-2911  
Facsimile: (701) 221-5842

Anurag Varma, Bar No. 471615  
PATTON BOGGS LLP  
2550 M Street, N.W.  
Washington, DC 20037  
Telephone: (202) 457-6000  
Facsimile: (202) 457-6315

Phillip L. Fraas  
STINSON MORRISON HECKER  
1150 18th St. NW, Suite 800  
Washington, DC 20036  
Telephone: (202) 785-9100  
Facsimile: (202) 785-9163

*Attorneys for Plaintiffs*

# **Exhibit 1**



# Intertribal Agriculture Council

100 North 27th Street, Suite 500, Billings, Montana 59101-2054 (406) 259-3525

January 2, 2013

Joe Sellers, Partner  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Avenue, NW  
Suite 500 West  
Washington, DC 20005

Dear Mr. Sellers:

The Intertribal Agriculture Council (IAC) is bound by charter to hold a membership meeting annually. It is during the course of this membership meeting that the year past is reviewed and the membership sets the course of the organization for the upcoming year.

During the 2012 Membership Meeting held December 13, 2012, at the Flamingo Resort, Las Vegas, NV; the Intertribal Agriculture Council Member Tribes voted unanimously to support the effort and work closely with Class Counsel in the creation of a foundation to administer the Keepseagle Cy Pres Fund. During this same session, the Member Tribes voted unanimously to request that the Class Counsel seek Track A relief (monetary relief & debt forgiveness) for those unsuccessful Track B claimants in the Keepseagle Case.

The IAC Board of Directors and staff look forward to working with Class Counsel in bringing to fruition the action taken by the IAC membership. We await your recommended course of action in these regards.

Sincerely

A handwritten signature in black ink, appearing to read "Harlan Beaulieu".

Harlan Beaulieu  
President

Cc: Ross Racine  
Executive Director

# Exhibit 2



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #ECWS-13-010

**TITLE: Support for a New Permanent Endowment Program from Keepseagle  
Cy Pres Funds**

EXECUTIVE COMMITTEE

PRESIDENT  
**Jefferson Keel**  
*Chickasaw Nation*

FIRST VICE-PRESIDENT  
**Juana Majel Dixon**  
*Pauma Band of Mission Indians*

RECORDING SECRETARY  
**Edward Thomas**  
*Central Council of Tlingit & Haida  
Indian Tribes of Alaska*

TREASURER  
**W. Ron Allen**  
*Jamestown S'Klallam Tribe*

REGIONAL VICE-PRESIDENTS

ALASKA  
**Bill Martin**  
*Central Council of Tlingit & Haida  
Indian Tribes of Alaska*

EASTERN OKLAHOMA  
**S. Joe Crittenden**  
*Cherokee Nation*

GREAT PLAINS  
**Robert Shepherd**  
*Sisseton Wahpeton*

MIDWEST  
**Matthew Wesaw**  
*Pokagon Band of Potawatomi*

NORTHEAST  
**Lance Gumbs**  
*Shinnecock Indian Nation*

NORTHWEST  
**Fawn Sharp**  
*Quinault Indian Nation*

PACIFIC  
**Don Arnold**  
*Scotts Valley Band of Pomo  
Indians*

ROCKY MOUNTAIN  
**Scott Russell**  
*Crow Tribe*

SOUTHEAST  
**Larry Townsend**  
*Lumbee Tribe*

SOUTHERN PLAINS  
**Robert Tippeconnie**  
*Comanche Nation*

SOUTHWEST  
**Joe Garcia**  
*Ohkay Owingeh*

WESTERN  
**Ned Norris, Jr**  
*Tohono O'odham Nation*

EXECUTIVE DIRECTOR  
**Jacqueline Johnson Pata**  
*Tlingit*

NCAI HEADQUARTERS  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, farming and ranching within Indian country remains a key to economic development for the Tribes and individual Indians; and

WHEREAS, the *Keepseagle v. Vilsack* class action lawsuit (“*Keepseagle*”) was filed in 1999 in United States District Court on behalf of all Native American farmers and ranchers who had been discriminated against and denied equal access to credit by the United States Department of Agriculture (“USDA”) in the USDA Farm Loan Program; and

WHEREAS, a \$760 million Settlement with the USDA was reached in *Keepseagle* in 2011 (“Settlement Agreement”); and

WHEREAS, the Settlement Agreement provides up to \$760 million in monetary relief, debt forgiveness, and tax relief to successful individual Native American farmer or rancher class claimants; and

WHEREAS, The Settlement Agreement provides a mechanism for distributing any leftover Settlement Agreement funds that are not distributed to individual claimants, and the unclaimed Settlement Agreement funds currently are deposited into a Designated Account set-up by Class Counsel and held for the benefit of the class; and

WHEREAS, the Settlement Agreement describes the procedure to distribute leftover settlement funds to non-profit entities that aided Native American farmers between 1981 and the Agreement’s execution date; and

WHEREAS, based upon *Keepseagle* claims to date there will likely be up to \$500M in unclaimed *cy pres* monies that would be distributed to *cy pres* beneficiaries; and

**WHEREAS**, NCAI believes that *cy pres* funds should create a long-term solution to Native American agricultural access to credit; and

**WHEREAS**, an endowment fund that promotes agricultural economic development would guarantee independent perpetual assistance to Native American farmers and ranchers with tribal oversight and control; and

**WHEREAS**, the unclaimed Settlement Agreement funds should be used to create a permanent endowment trust for Native American farmers and ranchers to be governed by a Board of Trustees that would utilize the investment income of the fund's corpus to distribute to *cy pres* beneficiaries per the terms of the Settlement Agreement to provide loans, equity grants, programmatic and technical assistance funding to Native American farmers and ranchers.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) hereby supports a new permanent endowment trust to be established with *cy pres* Funds with investment income used by *cy pres* beneficiaries pursuant to the Settlement Agreement for loans and equity grants, programmatic and technical assistance funding to Native American farmers and ranchers as the most impactful use of *Keepseagle cy pres* unclaimed Settlement Agreement funds to ensure access to capital for Native American farmers and ranchers in perpetuity.

**BE IT FURTHER RESOLVED**, that NCAI vehemently opposes any return of unclaimed *Keepseagle* Settlement Agreement funds to the United States.

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the Executive Board at the 2013 Executive Session of the National Congress of American Indians, held at the L'Enfant Plaza Hotel in Washington, DC, on March 3, 2013, with a quorum present.

  
\_\_\_\_\_  
President

**ATTEST:**

  
\_\_\_\_\_  
Recording Secretary

# **Exhibit 3**



COALITION OF LARGE TRIBES  
2040 W Main, Suite 112, Rapid City, SD 57702

**Resolution: 03-12-11-12**

**Resolution Entitled: SUPPORT FOR A NEW PERMANENT ENDOWMENT PROGRAM FROM KEEPSEAGLE CY PRES FUNDS**

**WHEREAS**, the Coalition of Large Tribes (COLT) was formally established in early April 2011, and is comprised of Tribes with large land base, including the Mandan, Hidatsa and Arikara Nations, the Oglala Sioux Tribe, the Crow Tribe, the Navajo Nation, the Sisseton Wahpeton Sioux Tribe, the Blackfeet Tribe of Montana, the Rosebud Sioux Tribe, Northern Ute, Shoshone Bannock, Colville Confederated Tribes, Ft. Belknap and the Cheyenne River Sioux Tribe. COLT is chaired by Chairmen Tex Hall of the MHA Nation; and

**WHEREAS** COLT was organized to provide a unified advocacy base for Tribes that govern large trust land bases and that strive to insure the most beneficial use of those lands for tribes and individual Indian landowners; and

**WHEREAS**, farming and ranching within the large land based Tribes remain a key to economic development for these Tribes; and

**WHEREAS**, the *Keepseagle v. Vilsack* class action lawsuit ("Keepseagle") was filed in 1999 in United States District Court on behalf of all Native American farmers and ranchers who had been discriminated against and denied equal access to credit by the United States Department of Agriculture ("USDA") in the USDA Farm Loan Program; and

**WHEREAS**, a \$760 million Settlement with the USDA was reached in Keepseagle in 2011; and

**WHEREAS**, the Settlement Agreement provides up to \$760 million in monetary relief, debt forgiveness, and tax relief to successful individual Native American farmer or rancher class claimants; and

**WHEREAS**, The Settlement Agreement provides a mechanism for distributing any leftover Settlement Agreement funds that are not distributed to individual claimants and the settlement award monies are deposited into a Designated Account set-up by Class Counsel and held for the benefit of the class; and

**WHEREAS**, the Settlement Agreement describes the procedure to distribute



COALITION OF LARGE TRIBES  
2040 W Main, Suite 112, Rapid City, SD 57702

leftover settlement funds to non-profit entities that aided Native American farmers between 1981 and the Agreement's execution date; and

**WHEREAS**, based upon Keepseagle claims to date there will likely be about \$500M in unclaimed *cy pres* monies that would be distributed to *cy pres* beneficiaries; and

**WHEREAS**, COLT believes that *cy pres* funds should create a long-term solution to Native American agricultural access to credit; and

**WHEREAS**, an endowment fund that promotes agricultural economic development through microcredit would guarantee independent perpetual assistance to Native American farmers and ranchers with tribal oversight and control; and

**WHEREAS**, the unclaimed funds of \$500M should be used to create a permanent endowment trust for Native American farmers and ranchers to be governed by a Board of Trustees that would utilize the investment income of the fund's corpus to provide loans, equity grants, programmatic and technical assistance funding to Native American farmers and ranchers; and

**WHEREAS**, the impact for Tribes with substantial reservation lands available for farming and ranching operations is very significant, including for the Tribes who are members of COLT;

**NOW THEREFORE BE IT RESOLVED**, that the Coalition of Large Tribes (COLT) hereby supports a new permanent endowment trust to be established with investment income used for loans and equity as the most impactful use of *Keepseagle cy pres* funds to ensure access to capital for Native American farmers and ranchers in perpetuity.

#### **CERTIFICATION**

This resolution was enacted at a duly called meeting of the Coalition of Large Tribes at a meeting held in Las Vegas on December 11, 2012, at which a quorum was present, with 7 members voting in favor, 0 members opposed, 0 members abstaining, and 2 members not present.

**Dated this 11<sup>th</sup> day of December, 2012.**

**Secretary, Coalition of Large Tribes**

A handwritten signature in black ink, appearing to be "Amanda R.", written over a horizontal line.

# **Exhibit 4**



# GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

1926 Stirling St, Rapid City, SD 57702

Phone: 605-388-5375 Fax: 605-343-3074

## **RESOLUTION NO. 51-11-30-12**

### **GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION (GPTCA)**

#### **Resolution to support for a new permanent endowment program from** **Keepseagle cy pres funds**

**WHEREAS**, the Great Plains Tribal Chairman's Association (GPTCA) is composed of sixteen elected Chairs and Presidents of sovereign treaty tribes and nations (or their duly appointed representative) that are located within the Great Plains Region of the Bureau of Indian Affairs in North Dakota, South Dakota, and Nebraska; and

**WHEREAS**, the GPTCA was formed to promote the common interests of the member tribes and their enrolled members in the Great Plains Region; and

**WHEREAS**, farming and ranching within the large land based Tribes remain a key to economic development for these Tribes; and

**WHEREAS**, the *Keepseagle v. Vilsack* class action lawsuit ("Keepseagle") was filed in 1999 in United States District Court on behalf of all Native American farmers and ranchers who had been discriminated against and denied equal access to credit by the United States Department of Agriculture ("USDA") in the USDA Farm Loan Program; and

**WHEREAS**, a \$760 million Settlement with the USDA was reached in Keepseagle in 2011; and

**WHEREAS**, the Settlement Agreement provides up to \$760 million in monetary relief, debt forgiveness, and tax relief to successful individual Native American farmer or rancher class claimants; and

**WHEREAS**, The Settlement Agreement provides a mechanism for distributing any leftover Settlement Agreement funds that are not distributed to individual claimants and the settlement award monies are deposited into a Designated Account set-up by Class Counsel and held for the benefit of the class; and

**WHEREAS**, the Settlement Agreement describes the procedure to distribute leftover settlement funds to non-profit entities that aided Native American farmers between 1981 and the Agreement's execution date; and

**WHEREAS**, based upon Keepseagle claims to date there will likely be about \$500M in unclaimed *cy pres* monies that would be distributed to *cy pres* beneficiaries; and

**WHEREAS**, the GPTCA believes that *cy pres* funds should create a long-term solution to Native American agricultural access to credit; and

**WHEREAS**, an endowment fund that promotes agricultural economic development through microcredit would guarantee independent perpetual assistance to Native American farmers and ranchers with tribal oversight and control; and

**WHEREAS**, the unclaimed funds of \$500M should be used to create a permanent endowment trust for Native American farmers and ranchers to be governed by a Board of Trustees that would utilize the investment income of the fund's corpus to provide loans, equity grants, programmatic and technical assistance funding to Native American farmers and ranchers; and

**WHEREAS**, the impact for Tribes with substantial reservation lands available for farming and ranching operations is very significant, including for the Tribes who are members of the GPTCA;

**NOW THEREFORE BE IT RESOLVED**, that the Great Plains Tribal Chairman's Association hereby supports a new permanent endowment trust to be established with investment income used for loans and equity as the most impactful use of *Keepseagle cy pres* funds to ensure access to capital for Native American farmers and ranchers in perpetuity.

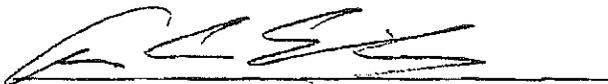
**AND BE IT FINALLY RESOLVED** that this resolution shall be the policy of the GPTCA until otherwise amended or rescinded, or until the goal of this Resolution has been accomplished.

**Resolution No. 51-11-30-11**

#### **CERTIFICATION**

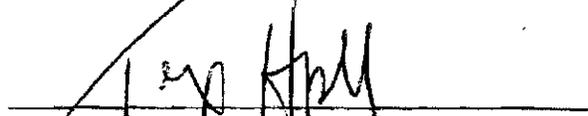
**This resolution was enacted at a duly called meeting of the Great Plains Tribal Chairman's Association held at Rapid City, South Dakota on November 30, 2012 at which a quorum was present, with 9 members voting in favor, 0 members opposed, 0 members abstaining, and 7 members not present.**

**Dated this 30th. Day of November 2012.**



**Secretary,  
Great Plains Tribal Chairman's Association**

**Attest:**



**Chairman, Tex Hall, Chairman, Mandan, Hidatsa and Arikara Nations (Three  
Affiliated Tribes)  
Great Plains Tribal Chairman's Association**

# **Exhibit 5**

## RESOLUTION NO. 171-13

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[a], and 1[c], is empowered to negotiate with Federal, State and local governments and others on behalf of the Tribe, and to advise and consult with representatives of all governmental agencies which may affect the Standing Rock Sioux Tribe; also empowered to promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services that may contribute to the social and economic advancement of the Tribe and its members; and

WHEREAS, farming and ranching within the Standing Rock Indian Reservation remains key to economic development for the Tribe as many Tribal members earn their livelihood by ranching and farming; and

WHEREAS, in 1999, the Keepseagle v. Vilsack class-action lawsuit was filed in United States District Court on behalf of Native American farmers and ranchers; and

WHEREAS, the Keepseagle lawsuit alleged the United States Department of Agriculture ["USDA"] discriminated against Native American farmers and ranchers by denying Native American farmers and ranchers equal access to credit under the USDA Farm Loan Program; and

WHEREAS, in 2011 the Keepseagle plaintiffs entered into a Settlement Agreement with the USDA; and

WHEREAS, the Settlement Agreement provides up to \$760 million in monetary relief, debt forgiveness and tax relief to successful Native American farmers and rancher claimants; and

WHEREAS, two settlement funds were created: [1] the first paid class members who submitted valid claims; and [2] the second fund provided up to \$80 million for full or partial loan forgiveness to qualifying class members; and

WHEREAS, the Settlement Agreement provides that any money remaining in the settlement funds after all payments to class members and expenses have been paid will be donated to one or more organizations that have provided agricultural, business assistance or advocacy services to Native Americans; and

WHEREAS, the Settlement Agreement provides a mechanism for distributing any leftover Settlement Agreement funds that are not distributed to individual claimants and the settlement award monies are deposited into a Designated Account set-up by Class Counsel and held for the benefit of the class; and

WHEREAS, the Settlement Agreement describes the procedure to distribute leftover settlement funds to non-profit entities that aided Native American farmers and ranchers between 1981 and the Agreement's execution date; and

WHEREAS, based upon Keepseagle claims to date there could be up to \$500 million dollars [\$500,000,000.00] in unclaimed monies [i.e. Cy Pres funds] that could be distributed to beneficiaries; and

WHEREAS, the Standing Rock Sioux Tribe believes that the *Cy Pres* Fund should create a long-term solution to Native American agricultural access to credit; and

WHEREAS, an endowment fund that promotes agricultural economic development through micro-credit would guarantee independent perpetual assistance to Native American farmers and ranchers with Tribal oversight and control; and

WHEREAS, unclaimed monies [i.e. *Cy Pres* funds] should be used to create a permanent endowment trust for Native American farmers and ranchers to be governed by a Board of Trustees that would utilize the investment income of the fund's corpus to provide loans, equity grants, programmatic and technical assistance funding to Native American farmers and ranchers;

NOW THEREFORE BE IT RESOLVED, the Standing Rock Sioux Tribe hereby supports the establishment of a new permanent endowment trust with investments income used for loans and equity as the most impactful use of the Keepseagle *Cy Pres* Fund to ensure access to capital for native American farmers and ranchers in perpetuity; and

BE IT FURTHER RESOLVED, the Standing Rock Sioux Tribe, furthermore, supports the business plan and structure for the Keepseagle Agricultural Consortium as outlined in Carla F. Frederick's February 5, 2013 Memorandum to Thomas W. Fredericks [see attached]; and

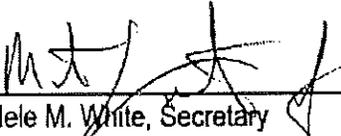
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

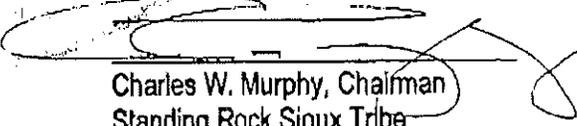
**CERTIFICATION**

We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] member, of whom 14, constituting a quorum, were present at a meeting duly and regularly, called, noticed, convened and held on the 26<sup>th</sup> day of MARCH, 2013, and that the foregoing resolution was duly adopted by the affirmative vote of 12 members, with 0 and with 2 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 26<sup>th</sup> DAY OF MARCH, 2013.

ATTEST:

  
Adele M. White, Secretary  
Standing Rock Sioux Tribe

  
Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 03-26-2013  
Motion No.: 23