

# **Native Sun News: Oglala Sioux man fights Cobell settlement**

**WEDNESDAY, NOVEMBER 2, 2011**

**Filed Under: Cobell | Trust**

[www.indianz.com](http://www.indianz.com)

***The following story was written and reported by Karin Eagle. All content © Native Sun News.***

RAPID CITY, SOUTH DAKOTA -- One Lakota man's story and willingness to protest alone, speaks for many Native people across Indian country who are left in the dark about the true implications of the Cobell lawsuit and subsequent settlement.

In the face of the Cobell Settlement there are hundreds of local stories that speak either for or against the acceptance of the settlement and its terms. More than anything, the case itself has raised so many questions for landowners and their heirs that it is almost impossible to begin to answer them.

One such story is one of frustration and often bewilderment. John Artichoker of the Oglala Sioux Tribe has questions and a fistful of documents that should, at first glance, answer any and all of the questions as to how his grandmother's estate was supposed to be handled by not only the tribe, but the Bureau of Indian Affairs and the BIA Superintendent.

Lucy Lessert, the maternal grandmother of Artichoker, had entered into a Grant of Exchange Assignment of Tribal Land with the Oglala Sioux Tribe. This is done when a tract or a series of tracts of land are held by a tribal land owner who wishes to exchange those tracts for a more desirable location, or to consolidate those tracts into a compact tract that can be more accessible and useable for the landowner. The tribe then holds ownership of that land, but the lease or revenues are paid either directly to the landowner, or if paid to the tribe, the tribe will pay that money to the landowner in its entirety.

The question and confusion that Artichoker and his family face at this point are why the BIA and the tribe do not uphold prior acknowledgements that the family is indeed entitled to the revenues generated by the leasing of the land owned by Lucy Lessert.

In 1939 the OST entered into the exchange grant with Lessert, which totaled 360 acres, and acknowledged the beneficiaries right to inherit the land via the grant exchange and the revenues. This agreement was signed by OST President, Frank Wilson.

In a memo to Mr. Jerry Jaeger, Aberdeen Area Director, dated Nov. 18, 1983, from the Office of the Solicitor, signed by Priscilla A. Wilfahrt, the opinion was given that the beneficial use of the land, including income from it should be granted to the heirs of Lucy Lessert upon her death. The heirs were identified as being Richard Lessert, son; David Lessert, son; Garfield Lessert, son; Emily Lessert Artichoker, daughter; and Egan Lessert, son. Mrs. Lessert died on February 22, 1946 without assigning an heir.

The OST passed a resolution with the official action to reassign the Exchange Assignment to the heirs of Lucy Lessert and to pay each heir lease income in proportion based on the heir's share of the estate. Each heir was to receive a 1/5 share in the Exchange Assignment. However, on July 8, 1965 David Lessert's 1/5 share was passed to Emily Lessert Artichoker through an Untitled Designation of Beneficiary, which brought her share to 2/5 interest in the Exchange Agreement. The Exchange Assignment has a current lease to Tim and Lola Lessert until Dec. 31, 2011, cousins to John Artichoker. In 2008 the BIA implemented a new internal policy regarding the payment of lease income on tribal land assignments. Up until 2008, the BIA always collected the lease income, because tribal land assignments were on trust land owned by the Tribe, the BIA Paid the Assignees when the income was received.

In 2008 the internal operating policy of the BIA was changed to pay the land owner of a tribal assignment, which is the Tribe, shifting the burden on the Tribe when the lease income was received to pay the Assignees of the Assignment old lease income.

This policy is the key because the BIA relied on it as the reason for not paying the Assignees the lease income, as stated in a letter from the Great Plains Regional Director to Artichoker, dated Nov. 24, 2008.

The BIA Land Officer, in an undated document, stated that the last payment received was for the 2006 lease season, which is contradictory to a letter dated May 14, 2008 from Artichoker to the BIA, which states that the 2006 lease were not received by the heirs, and none since.

OST Resolution No. 6-52 noted that since the death of Lucy Lessert in 1946, the lease income from 1946-1952 had been collected by the Tribe, but had been credited to the Tribe rather than to the estate or the heirs of Lucy Lessert. This resolution directed the President and Secretary of the Tribe to issue the heirs of Lucy Lesser the grant Exchange of Assignment and to pay each heir their lawful share of any funds collected on for the use of the land.

The issues that the heirs of Lessert have right now are whether there was an agreement with the tribe for the land lease money to paid to the tribe in the first

place, and if no agreement was in place, then the lease payments need to be paid to the heirs, less any fees or costs incurred by the tribe for transferring and managing those funds.

At issue is also to determine when the lease income was last paid to the heirs, and once these issues are resolved, the tribe and the heirs need to agree up on how the future lease payments will be made to the heirs from here forward.

John Artichoker Jr. and his family are saying that the payments that need to be reimbursed are: Possibly 2006, and 2007-2010 each year in the amount of \$4,250.00. The 2011 lease year will also need to be determined as to how and when the lease money is paid to the heirs.

With the Cobell Settlement, there was an option to opt out of the lawsuit, with the deadline being in April 2011. Any parties who have not opted out are barred from further litigation against the Department of the Interior.

Artichoker and his family are concerned that this is going to directly impact the outcome of their situation concerning the ongoing mismanagement of their family's land interest. This is the purpose of his protest at the Cobell Settlement meeting. His voice was able to reach several landowners with interest in the settlement, as well as the attorneys and tribal leaders from several nations represented in the lawsuit.

(Karin Eagle can be reached at [staffwriter2@nsweekly.com](mailto:staffwriter2@nsweekly.com))