

# Red Eagle looks to settle Osage trust case as Cobell settlement awaits Obama's signature

## Many Osage trust beneficiaries excluded from Cobell settlement

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Eloise Cobell. Courtesy Photo

The historic Cobell case is coming to a close as the \$3.4 billion settlement, approved by the U.S. House of Representatives Tuesday, marks the end of a 14-year battle to obtain justice for more than 500,000 Native Americans whose Indian trust accounts were mismanaged by the Department of the Interior.

Osages who won't be included in the Cobell settlement are Osage headright holders. Osages who will be included in the Cobell settlement are Osage IM account holders. Many Osages will have to wait for the outcome of the Nation's 10-year-old case that seeks an accounting of 140 years of mismanagement of the tribe's oil royalty payments and other alleged malfeasance. The Nation is asking for a \$310 million settlement in actual damages for the Tranche One phase of the trial. There is a total of three Tranches for the Osage trust case.

The case is currently in the U.S. Court of Federal Claims and will be decided by Judge Emily Hewitt. Judge Hewitt has yet to schedule a court date to begin Tranche Two of the case but prior to the trial beginning Hewitt ruled favorably in the Nation's favor to be awarded \$250 million and setting a trial for the remaining \$60 million, which is separated into two claims of \$15 million and \$45 million, that was heard this summer, according to Osage Mineral Councilman Galen Crum, who is a member of the Osage Trust Team. The two claims cover oil-royalty claims from 1974 to 2000 and investment-related claims from 1973 to 1992. Hewitt has yet to make a ruling on the \$60 million claim but it could be any day. Tranche Two of the case will examine the malfeasance of Osage trust accounts that took place prior to 1974.

According to Washington D.C.-based attorney Merrill Godfrey of Akin Gump Strauss Hauer & Feld LLP, when the ruling is issued, the Osage Nation and the United States will be required to submit final calculations, consistent with the court's rulings. The Nation has also requested to schedule a trial for all other claims for the 1906 to 2000 period, he said. A ruling on that request is expected shortly after the court issues its post-trial ruling. Currently, Nation's counsel is planning for a trial on these remaining claims in late 2011.

Minus attorney fees (attorneys for the case will receive five percent) the settlement would amount to roughly \$139,000 per headright for Tranche One alone. How the judgment will be distributed will ultimately be decided by Hewitt. Currently 25 percent of shareholders are non-Osage.

"I think the passage [of the Cobell settlement] shows the federal government's willingness to settle old trust claims, as promised by President Obama," Red Eagle said. "If I have the opportunity to speak to the President in his upcoming meeting with tribal leaders, I plan to seek his support with our Osage trust cases."

Red Eagle will participate in the tribal leader's summit scheduled for Dec. 16.

The Osage Trust Team is made up of Red Eagle, Speaker of the Congress Jerri Jean Branstetter, Osage Minerals Council Chairman Dudley Whitehorn, OMC Councilwoman Cynthia Boone and OMC Councilman Galen Crum.

As for the Cobell settlement, 500,000 Native Americans may be entitled to payments totaling \$1.25 billion. Most Individual Indian Money account holders will receive between \$500 and \$1,500. Those with high-income properties could see a higher payout.

Eloise Cobell, the principal plaintiff in the case and a member of the Blackfeet Tribe in Montana, originally filed the case after she could not get an accurate account of her IIM account and discovered there were thousands of Native IIM account holders with the same issues. As a banker herself, she knew there was something wrong with the system.

After the settlement was announced in December of 2009, Cobell said this: "Although we have reached a settlement totaling more than \$3.4 billion dollars, there is little doubt this is significantly less than the full amount to which individual Indians are entitled. Yes, we could prolong our struggle and fight longer, and perhaps one day we would know - down to the penny - how much individual Indians are owed. Perhaps we could even litigate long enough to increase the settlement amount.

"Nevertheless we are compelled to settle now by the sobering realization that our class grows smaller each year, each month, and every day, as our elders die, and are forever prevented from receiving their just compensation. We also face the uncomfortable, but unavoidable fact that a large number of individual money account holders currently subsist in the direst poverty, and this settlement can begin to address that extreme situation and provide some hope and a better quality of life for their remaining years."

Out of the \$3.4 billion settlement, \$1.25 will be disbursed to IIM account holders, \$2 million will be used to consolidate tribal lands by purchasing fractionated interests and \$60 million will go to a scholarship fund for Native students. With every sale of fractionated interest, money will be added to the scholarship fund. Land interests purchased under the settlement will go to the tribes.

For more information on the Cobell settlement visit [www.cobellsettlement.com](http://www.cobellsettlement.com).

## **Location**

Pawhuska, OK  
United States