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GENERAL MEMORANDUM 10-147

Congress Approves *Cobell* Settlement Legislation; Next Step is Signature by the President

The House and Senate have approved the *Cobell* settlement legislation, and the bill now waits an expected signature by President Obama. The settlement is the outcome of the lawsuit filed in 1996 against the Federal government for mismanagement of individual Indian trust accounts and trust assets.

On November 30, 2010, the House of Representatives approved by a vote of 256-152 the Claims Resolution Act of 2010 (HR 4783) which includes the *Cobell* Settlement, the *Pigford II* settlement (African American farmers vs. the Department of Agriculture), four tribal water rights bills (White Mountain Apache, Crow, Taos Pueblo and the Aamodt settlement affecting the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque), and a one-year extension of the Temporary Assistance for Needy families (TANF) program. The Senate approved the legislation by unanimous consent on November 19, 2010.

Attorney General Eric Holder, Secretary of Interior Ken Salazar and Secretary of Agriculture Tom Vilsack issued a joint statement (attached) lauding the passage of the historic agreements; President Obama issued a statement applauding passage of HR 4783 as well. We also attach the text of the settlement legislation.

The bill awaiting the President's signature reflects recent changes agreed to by the parties to the settlement. When compared to the earlier version of the *Cobell* legislation approved twice by the House, the final bill adds \$100 million to the compensation fund for individuals (creating a Trust Administration Adjustment Fund) to pay final judgments, awards and compromise settlements bringing the total to \$1.5 billion for the individuals compensation fund. The \$100 million will be transferred from the Trust Land Consolidation Fund for voluntary buy-back of fractionated interests, leaving a total of \$1.9 billion in that fund. Of the \$1.9 billion, up to \$60 million may be transferred to an Indian Scholarship Holding Fund. To summarize, the final bill includes:

- Individuals' compensation fund: \$1.5 billion
- Trust Administration Fund: \$100 million
- Trust Land Consolidation Fund: \$1.9 billion (allows \$60 million to be transferred to scholarship fund).

The bill in its final form reflects the changes in the settlement to provide additional protection for class members regarding the safety and soundness of the bank holding the settlement funds and to require consultation with Indian Country regarding the identification of fractional interests to be purchased by the Trust Land Consolidation Fund.

With regard to attorney fees and expenses and costs the bill provides that the court will make that determination; also, there is not a cap on attorney fees.

The cost of the bill is offset – Senator Coburn (R-OK) dropped his objections to the settlement once offsets for its cost were identified. Among the offsets is a \$400 million reduction in the Treasury Department's authorization for an Emergency Fund for Indian Safety and Health. In 2008 a \$2 billion authorization for an Emergency Fund for Indian Safety and Health was enacted as part of a global HIV/AIDS bill (PL 110-293). This is an authorization and it would only become available upon development of plans by the Departments of Justice, Interior and Health and Human Services to be presented to the appropriations committees for their approval and appropriation. There are no such plans and no funding has been realized under this authorization.

Enactment of the *Cobell* settlement legislation is a very significant and historic development for Indian Country. It brings to a close the litigation that was filed in 1996 against the Department of the Interior that was oftentimes acrimonious. Passage of the legislation does not mean that funds will be distributed in the near future to Indian beneficiaries, as there will now be processes including court approval of the agreement, certification of the Trust Administration portion as a class action, notification of class members, and a Fairness Hearing. However, these processes could not proceed absent enactment of the authorizing legislation.

Please let us know if we may provide additional information regarding the *Cobell* settlement.

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News Release

Attorney General Holder, Secretaries Salazar and Vilsack Applaud Final Passage of the Claims Settlement Act

11/30/2010

Contacts:

USDOJ Office of Public Affairs 202-514-2007
DOI Office of Communications 202- 208-6416
USDA Office of Communications 202-720-4623

Washington, D.C. - Today, the Departments of Justice, Interior and Agriculture applauded the bipartisan House passage of the Claims Settlement Act. The Act, which recently passed the Senate, will provide long-awaited funding for the agreements reached in the Pigford II lawsuit, brought by African American farmers; the Cobell lawsuit, brought by Native Americans over the management of Indian trust accounts and resources; and four separate water rights suits made by Native American tribes. President Obama has said that he will sign the legislation into law.

“These are truly historic settlements that do not only resolve litigation, but also offer a new relationship between many deserving Americans and the federal agencies that play an important role in their lives,” said Attorney General Eric Holder. “Bringing this litigation to a close has been a priority for this Administration, and today’s vote in Congress is a significant, historic achievement. These cases provide fair deals for the plaintiffs and for the American taxpayers.”

“Congress’ approval of the Cobell settlement and the four Indian water rights settlements is nothing short of historic for Indian nations,” Secretary of the Interior Ken Salazar said. “The settlements honorably and responsibly address long-standing injustices and represent a major step forward in President Obama’s

agenda to empower tribal governments, fulfill our trust responsibilities to tribal members and help tribal leaders build safer, stronger, healthier and more prosperous communities.”

“President Obama and I made a firm commitment not only to treat all farmers fairly and equally, but to right the wrongs in USDA's past,” said Agriculture Secretary Tom Vilsack. “I applaud those who took this historic step to ensure black farmers who faced discrimination by their government finally receive justice. And I commend those who led this fight in the U.S. Congress and I am thankful for their unwavering determination. Today’s vote will help the Department of Agriculture move beyond this sad chapter in history. The bill that passed the Senate and House includes strong protections against waste, fraud, and abuse to ensure integrity of the claims process. In the months and years ahead, we will not stop working to move the Department into a new era as a model employer and premier service provider. We also must continue the good work we started to resolve all remaining administrative claims.”

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AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. _____

To resolve the water rights claims of certain Indian tribes,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT In the Nature of a Substitute intended to be
proposed by Mr. BAUCUS (for himself and Mr. DORGAN)

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the

5 “Claims Resolution Act of 2010”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of

7 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION
SETTLEMENT**

Sec. 101. Individual Indian Money Account Litigation Settlement.

**TITLE II—FINAL SETTLEMENT OF CLAIMS FROM IN RE BLACK
FARMERS DISCRIMINATION LITIGATION**

- Sec. 201. Appropriation of funds for final settlement of claims from In re Black Farmers Discrimination Litigation.

TITLE III—WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS
QUANTIFICATION

- Sec. 301. Short title.
Sec. 302. Purposes.
Sec. 303. Definitions.
Sec. 304. Approval of Agreement.
Sec. 305. Water rights.
Sec. 306. Contract.
Sec. 307. Authorization of WMAT rural water system.
Sec. 308. Satisfaction of claims.
Sec. 309. Waivers and releases of claims.
Sec. 310. White Mountain Apache Tribe Water Rights Settlement Subaccount.
Sec. 311. Miscellaneous provisions.
Sec. 312. Funding.
Sec. 313. Antideficiency.
Sec. 314. Compliance with environmental laws.

TITLE IV—CROW TRIBE WATER RIGHTS SETTLEMENT

- Sec. 401. Short title.
Sec. 402. Purposes.
Sec. 403. Definitions.
Sec. 404. Ratification of Compact.
Sec. 405. Rehabilitation and improvement of Crow Irrigation Project.
Sec. 406. Design and construction of MR&I System.
Sec. 407. Tribal water rights.
Sec. 408. Storage allocation from Bighorn Lake.
Sec. 409. Satisfaction of claims.
Sec. 410. Waivers and releases of claims.
Sec. 411. Crow Settlement Fund.
Sec. 412. Yellowtail Dam, Montana.
Sec. 413. Miscellaneous provisions.
Sec. 414. Funding.
Sec. 415. Repeal on failure to meet enforceability date.
Sec. 416. Antideficiency.

TITLE V—TAOS PUEBLO INDIAN WATER RIGHTS

- Sec. 501. Short title.
Sec. 502. Purposes.
Sec. 503. Definitions.
Sec. 504. Pueblo rights.
Sec. 505. Taos Pueblo Water Development Fund.
Sec. 506. Marketing.
Sec. 507. Mutual-Benefit Projects.
Sec. 508. San Juan-Chama Project contracts.
Sec. 509. Authorizations, ratifications, confirmations, and conditions precedent.
Sec. 510. Waivers and releases of claims.
Sec. 511. Interpretation and enforcement.
Sec. 512. Disclaimer.
Sec. 513. Antideficiency.

TITLE VI—AAMODT LITIGATION SETTLEMENT

- Sec. 601. Short title.
- Sec. 602. Definitions.

Subtitle A—Pojoaque Basin Regional Water System

- Sec. 611. Authorization of Regional Water System.
- Sec. 612. Operating Agreement.
- Sec. 613. Acquisition of Pueblo water supply for Regional Water System.
- Sec. 614. Delivery and allocation of Regional Water System capacity and water.
- Sec. 615. Aamodt Settlement Pueblos' Fund.
- Sec. 616. Environmental compliance.
- Sec. 617. Funding.

Subtitle B—Pojoaque Basin Indian Water Rights Settlement

- Sec. 621. Settlement Agreement and contract approval.
- Sec. 622. Environmental compliance.
- Sec. 623. Conditions precedent and enforcement date.
- Sec. 624. Waivers and releases of claims.
- Sec. 625. Effect.
- Sec. 626. Antideficiency.

TITLE VII—RECLAMATION WATER SETTLEMENTS FUND

- Sec. 701. Mandatory appropriation.

TITLE VIII—GENERAL PROVISIONS

Subtitle A—Unemployment Compensation Program Integrity

- Sec. 801. Collection of past-due, legally enforceable State debts.
- Sec. 802. Reporting of first day of earnings to directory of new hires.

Subtitle B—TANF

- Sec. 811. Extension of the Temporary Assistance for Needy Families program.
- Sec. 812. Modifications to TANF data reporting.

Subtitle C—Customs User Fees; Continued Dumping and Subsidy Offset

- Sec. 821. Customs user fees.
- Sec. 822. Limitation on distributions relating to repeal of continued dumping and subsidy offset.

Subtitle D—Emergency Fund for Indian Safety and Health

- Sec. 831. Emergency Fund for Indian Safety and Health.

Subtitle E—Rescission of Funds From WIC Program

- Sec. 841. Rescission of funds from WIC program.

Subtitle F—Budgetary Effects

- Sec. 851. Budgetary effects.

1 **TITLE I—INDIVIDUAL INDIAN**
2 **MONEY ACCOUNT LITIGATION**
3 **SETTLEMENT**

4 **SEC. 101. INDIVIDUAL INDIAN MONEY ACCOUNT LITIGA-**
5 **TION SETTLEMENT.**

6 (a) DEFINITIONS.—In this section:

7 (1) AGREEMENT ON ATTORNEYS' FEES, EX-
8 PENSES, AND COSTS.—The term “Agreement on At-
9 torneys' Fees, Expenses, and Costs” means the
10 agreement dated December 7, 2009, between Class
11 Counsel (as defined in the Settlement) and the De-
12 fendants (as defined in the Settlement) relating to
13 attorneys' fees, expenses, and costs incurred by
14 Class Counsel in connection with the Litigation and
15 implementation of the Settlement, as modified by
16 the parties to the Litigation.

17 (2) AMENDED COMPLAINT.—The term
18 “Amended Complaint” means the Amended Com-
19 plaint attached to the Settlement.

20 (3) FINAL APPROVAL.—The term “final ap-
21 proval” has the meaning given the term in the Set-
22 tlement.

23 (4) LAND CONSOLIDATION PROGRAM.—The
24 term “Land Consolidation Program” means a pro-
25 gram conducted in accordance with the Settlement,

1 the Indian Land Consolidation Act (25 U.S.C. 2201
2 et seq.), and subsection (e)(2) under which the Sec-
3 retary may purchase fractional interests in trust or
4 restricted land.

5 (5) LITIGATION.—The term “Litigation” means
6 the case entitled *Elouise Cobell et al. v. Ken Salazar*
7 *et al.*, United States District Court, District of Co-
8 lumbia, Civil Action No. 96–1285 (TFH).

9 (6) PLAINTIFF.—The term “Plaintiff” means a
10 member of any class certified in the Litigation.

11 (7) SECRETARY.—The term “Secretary” means
12 the Secretary of the Interior.

13 (8) SETTLEMENT.—The term “Settlement”
14 means the Class Action Settlement Agreement dated
15 December 7, 2009, in the Litigation, as modified by
16 the parties to the Litigation.

17 (9) TRUST ADMINISTRATION ADJUSTMENT
18 FUND.—The term “Trust Administration Adjust-
19 ment Fund” means the \$100,000,000 deposited in
20 the Settlement Account (as defined in the Settle-
21 ment) pursuant to subsection (j)(1) for use in mak-
22 ing the adjustments authorized by that subsection.

23 (10) TRUST ADMINISTRATION CLASS.—The
24 term “Trust Administration Class” means the Trust
25 Administration Class as defined in the Settlement.

1 (b) PURPOSE.—The purpose of this section is to au-
2 thorize the Settlement.

3 (c) AUTHORIZATION.—

4 (1) IN GENERAL.—The Settlement is author-
5 ized, ratified, and confirmed.

6 (2) AMENDMENTS.—Any amendment to the
7 Settlement is authorized, ratified, and confirmed, to
8 the extent that such amendment is executed to make
9 the Settlement consistent with this section.

10 (d) JURISDICTIONAL PROVISIONS.—

11 (1) IN GENERAL.—Notwithstanding the limita-
12 tion on the jurisdiction of the district courts of the
13 United States in section 1346(a)(2) of title 28,
14 United States Code, the United States District
15 Court for the District of Columbia shall have juris-
16 diction of the claims asserted in the Amended Com-
17 plaint for purposes of the Settlement.

18 (2) CERTIFICATION OF TRUST ADMINISTRATION
19 CLASS.—

20 (A) IN GENERAL.—Notwithstanding the
21 requirements of the Federal Rules of Civil Pro-
22 cedure, the court in the Litigation may certify
23 the Trust Administration Class.

24 (B) TREATMENT.—On certification under
25 subparagraph (A), the Trust Administration

1 Class shall be treated as a class certified under
2 rule 23(b)(3) of the Federal Rules of Civil Pro-
3 cedure for purposes of the Settlement.

4 (e) TRUST LAND CONSOLIDATION.—

5 (1) TRUST LAND CONSOLIDATION FUND.—

6 (A) ESTABLISHMENT.—On final approval
7 of the Settlement, there shall be established in
8 the Treasury of the United States a fund, to be
9 known as the “Trust Land Consolidation
10 Fund”.

11 (B) AVAILABILITY OF AMOUNTS.—
12 Amounts in the Trust Land Consolidation
13 Fund shall be made available to the Secretary
14 during the 10-year period beginning on the date
15 of final approval of the Settlement—

16 (i) to conduct the Land Consolidation
17 Program; and

18 (ii) for other costs specified in the
19 Settlement.

20 (C) DEPOSITS.—

21 (i) IN GENERAL.—On final approval
22 of the Settlement, the Secretary of the
23 Treasury shall deposit in the Trust Land
24 Consolidation Fund \$1,900,000,000 out of
25 the amounts appropriated to pay final

1 judgments, awards, and compromise settle-
2 ments under section 1304 of title 31,
3 United States Code.

4 (ii) CONDITIONS MET.—The condi-
5 tions described in section 1304 of title 31,
6 United States Code, shall be deemed to be
7 met for purposes of clause (i).

8 (D) TRANSFERS.—In a manner designed
9 to encourage participation in the Land Consoli-
10 dation Program, the Secretary may transfer, at
11 the discretion of the Secretary, not more than
12 \$60,000,000 of amounts in the Trust Land
13 Consolidation Fund to the Indian Education
14 Scholarship Holding Fund established under
15 paragraph (3).

16 (2) OPERATION.—The Secretary shall consult
17 with Indian tribes to identify fractional interests
18 within the respective jurisdictions of the Indian
19 tribes for purchase in a manner that is consistent
20 with the priorities of the Secretary.

21 (3) INDIAN EDUCATION SCHOLARSHIP HOLDING
22 FUND.—

23 (A) ESTABLISHMENT.—On final approval
24 of the Settlement, there shall be established in
25 the Treasury of the United States a fund, to be

1 known as the “Indian Education Scholarship
2 Holding Fund”.

3 (B) AVAILABILITY.—Notwithstanding any
4 other provision of law governing competition,
5 public notification, or Federal procurement or
6 assistance, amounts in the Indian Education
7 Scholarship Holding Fund shall be made avail-
8 able, without further appropriation, to the Sec-
9 retary to contribute to an Indian Education
10 Scholarship Fund, as described in the Settle-
11 ment, to provide scholarships for Native Ameri-
12 cans.

13 (4) ACQUISITION OF TRUST OR RESTRICTED
14 LAND.—The Secretary may acquire, at the discre-
15 tion of the Secretary and in accordance with the
16 Land Consolidation Program, any fractional interest
17 in trust or restricted land.

18 (5) TREATMENT OF UNLOCATABLE PLAIN-
19 TIFFS.—A Plaintiff, the whereabouts of whom are
20 unknown and who, after reasonable efforts by the
21 Secretary, cannot be located during the 5-year pe-
22 riod beginning on the date of final approval of the
23 Settlement, shall be considered to have accepted an
24 offer made pursuant to the Land Consolidation Pro-
25 gram.

1 (f) TAXATION AND OTHER BENEFITS.—

2 (1) INTERNAL REVENUE CODE.—For purposes
3 of the Internal Revenue Code of 1986, amounts re-
4 ceived by an individual Indian as a lump sum or a
5 periodic payment pursuant to the Settlement shall
6 not be—

7 (A) included in gross income; or

8 (B) taken into consideration for purposes
9 of applying any provision of the Internal Rev-
10 enue Code that takes into account excludable
11 income in computing adjusted gross income or
12 modified adjusted gross income, including sec-
13 tion 86 of that Code (relating to Social Security
14 and tier 1 railroad retirement benefits).

15 (2) OTHER BENEFITS.—Notwithstanding any
16 other provision of law, for purposes of determining
17 initial eligibility, ongoing eligibility, or level of bene-
18 fits under any Federal or federally assisted program,
19 amounts received by an individual Indian as a lump
20 sum or a periodic payment pursuant to the Settle-
21 ment shall not be treated for any household member,
22 during the 1-year period beginning on the date of re-
23 ceipt—

24 (A) as income for the month during which
25 the amounts were received; or

1 (B) as a resource.

2 (g) INCENTIVE AWARDS AND AWARD OF ATTORNEYS'
3 FEES, EXPENSES, AND COSTS UNDER SETTLEMENT
4 AGREEMENT.—

5 (1) IN GENERAL.—Subject to paragraph (3),
6 the court in the Litigation shall determine the
7 amount to which the Plaintiffs in the Litigation may
8 be entitled for incentive awards and for attorneys'
9 fees, expenses, and costs—

10 (A) in accordance with controlling law, in-
11 cluding, with respect to attorneys' fees, ex-
12 penses, and costs, any applicable rule of law re-
13 quiring counsel to produce contemporaneous
14 time, expense, and cost records in support of a
15 motion for such fees, expenses, and costs; and

16 (B) giving due consideration to the special
17 status of Class Members (as defined in the Set-
18 tlement) as beneficiaries of a federally created
19 and administered trust.

20 (2) NOTICE OF AGREEMENT ON ATTORNEYS'
21 FEES, EXPENSES, AND COSTS.—The description of
22 the request of Class Counsel for an amount of attor-
23 neys' fees, expenses, and costs required under para-
24 graph C.1.d. of the Settlement shall include a de-

1 description of all material provisions of the Agreement
2 on Attorneys' Fees, Expenses, and Costs.

3 (3) EFFECT ON AGREEMENT.—Nothing in this
4 subsection limits or otherwise affects the enforce-
5 ability of the Agreement on Attorneys' Fees, Ex-
6 penses, and Costs.

7 (h) SELECTION OF QUALIFYING BANK.—The United
8 States District Court for the District of Columbia, in exer-
9 cising the discretion of the Court to approve the selection
10 of any proposed Qualifying Bank (as defined in the Settle-
11 ment) under paragraph A.1. of the Settlement, may con-
12 sider any factors or circumstances regarding the proposed
13 Qualifying Bank that the Court determines to be appro-
14 priate to protect the rights and interests of Class Members
15 (as defined in the Settlement) in the amounts to be depos-
16 ited in the Settlement Account (as defined in the Settle-
17 ment).

18 (i) APPOINTEES TO SPECIAL BOARD OF TRUST-
19 EES.—The 2 members of the special board of trustees to
20 be selected by the Secretary under paragraph G.3. of the
21 Settlement shall be selected only after consultation with,
22 and after considering the names of possible candidates
23 timely offered by, federally recognized Indian tribes.

24 (j) TRUST ADMINISTRATION CLASS ADJUST-
25 MENTS.—

1 (1) FUNDS.—

2 (A) IN GENERAL.—In addition to the
3 amounts deposited pursuant to paragraph E.2.
4 of the Settlement, on final approval, the Sec-
5 retary of the Treasury shall deposit in the
6 Trust Administration Adjustment Fund of the
7 Settlement Account (as defined in the Settle-
8 ment) \$100,000,000 out of the amounts appro-
9 priated to pay final judgments, awards, and
10 compromise settlements under section 1304 of
11 title 31, United States Code, to be allocated
12 and paid by the Claims Administrator (as de-
13 fined in the Settlement and pursuant to para-
14 graph E.1.e of the Settlement) in accordance
15 with this subsection.

16 (B) CONDITIONS MET.—The conditions de-
17 scribed in section 1304 of title 31, United
18 States Code, shall be deemed to be met for pur-
19 poses of subparagraph (A).

20 (2) ADJUSTMENT.—

21 (A) IN GENERAL.—After the calculation of
22 the pro rata share in Section E.4.b of the Set-
23 tlement, the Trust Administration Adjustment
24 Fund shall be used to increase the minimum

1 payment to each Trust Administration Class
2 Member whose pro rata share is—

3 (i) zero; or

4 (ii) greater than zero, but who would,
5 after adjustment under this subparagraph,
6 otherwise receive a smaller Stage 2 pay-
7 ment than those Trust Administration
8 Class Members described in clause (i).

9 (B) RESULT.—The amounts in the Trust
10 Administration Adjustment Fund shall be ap-
11 plied in such a manner as to ensure, to the ex-
12 tent practicable (as determined by the court in
13 the Litigation), that each Trust Administration
14 Class Member receiving amounts from the
15 Trust Administration Adjustment Fund receives
16 the same total payment under Stage 2 of the
17 Settlement after making the adjustments re-
18 quired by this subsection.

19 (3) TIMING OF PAYMENTS.—The payments au-
20 thorized by this subsection shall be included with the
21 Stage 2 payments under paragraph E.4. of the Set-
22 tlement.

23 (k) EFFECT OF ADJUSTMENT PROVISIONS.—Not-
24 withstanding any provision of this section, in the event

1 that a court determines that the application of subsection
2 (j) is unfair to the Trust Administration Class—

3 (1) subsection (j) shall not go into effect; and

4 (2) on final approval of the Settlement, in addi-
5 tion to the amounts deposited into the Trust Land
6 Consolidation Fund pursuant to subsection (e), the
7 Secretary of the Treasury shall deposit in that Fund
8 \$100,000,000 out of amounts appropriated to pay
9 final judgments, awards, and compromise settle-
10 ments under section 1304 of title 31, United States
11 Code (the conditions of which section shall be
12 deemed to be met for purposes of this paragraph) to
13 be used by the Secretary in accordance with sub-
14 section (e).

15 **TITLE II—FINAL SETTLEMENT**
16 **OF CLAIMS FROM IN RE**
17 **BLACK FARMERS DISCRIMI-**
18 **NATION LITIGATION**

19 **SEC. 201. APPROPRIATION OF FUNDS FOR FINAL SETTLE-**
20 **MENT OF CLAIMS FROM IN RE BLACK FARM-**
21 **ERS DISCRIMINATION LITIGATION.**

22 (a) DEFINITIONS.—In this section:

23 (1) SETTLEMENT AGREEMENT.—The term
24 “Settlement Agreement” means the settlement
25 agreement dated February 18, 2010 (including any

