

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GEORGE B. KEEPS EAGLE,)	
et al.,)	
)	Civil Action
Plaintiffs,)	No. 99-3119
)	
v.)	December 2, 2014
)	12:20 p.m.
ANN M. VENEMAN,)	
et al.,)	Washington, D.C.
)	
Defendants.)	

**TRANSCRIPT OF STATUS CALL PROCEEDINGS
BEFORE THE HONORABLE EMMET G. SULLIVAN,
UNITED STATES DISTRICT COURT JUDGE**

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MORNING SESSION, DECEMBER 2, 2014

12:16PM 1
12:16PM 2 (12:16 p.m.)
12:16PM 3 THE COURTROOM CLERK: Your Honor, this is civil action
12:16PM 4 99-3119, George B. Keeps Eagle, et al. versus Ann M. Veneman, et
12:16PM 5 al. Will counsel please come forward and identify yourselves for
12:16PM 6 the record.
12:17PM 7 MR. SELLERS: Good morning, Your Honor. Joseph Sellers
12:17PM 8 for the plaintiff. With me at counsel table is David Frantz,
12:17PM 9 Peter Romer Friedman and Christine Webber.
12:17PM 10 THE COURT: All right. Good morning to everybody. Good
12:17PM 11 afternoon. It's after 12.
12:17PM 12 MR. SANDBERG: Good afternoon, Your Honor. Justin
12:17PM 13 Sandberg for the United States Department of Agriculture, and
12:17PM 14 with me is Judd Subar.
12:17PM 15 THE COURT: All right. Good afternoon to you both. And
12:17PM 16 there are a number of individuals in the well of the court, and I
12:17PM 17 assume many of them are members of the class, and you are always
12:17PM 18 welcome here, you know that. It's good to see many of you --
12:17PM 19 many familiar faces over the last -- when was this case filed,
12:17PM 20 1999? So, some of you I've seen over the past 14 years or so. I
12:17PM 21 said in an order earlier that I wouldn't -- this would not be an
12:17PM 22 opportunity for the Court to hear from individuals other than
12:17PM 23 attorneys who represent parties before the Court, and I plan to
12:18PM 24 stick to that, recognizing that at some point it's highly likely
12:18PM 25 that there will be an appropriate forum, and I'm choosing my

12:18PM I words carefully, for people to express their opinions.

12:18PM 2 Now, having -- are there people in the hallway? If so,

12:18PM 3 what about the spillover courtroom? Are there people out in the

12:18PM 4 hallway? Marshal, are there people out in the hallway? Okay.

12:18PM 5 That's good. If there were, I was going to suggest -- we have

12:18PM 6 spillover courtrooms that we can use so that people can hear

12:18PM 7 because I'm sure there are a number of people who have traveled

12:18PM 8 from quite a ways away. Getting back to what I was saying, I'm

12:18PM 9 going to make one exception for that ruling I issued some time

12:18PM 10 ago limiting representations to the attorneys, and that exception

12:18PM 11 is going to be for the main plaintiff, Ms. Marilyn Keeps Eagle.

12:19PM 12 I understand she's present; is that right?

12:19PM 13 MR. SELLERS: Yes.

12:19PM 14 THE COURT: I should recognize you. How are you? How

12:19PM 15 could I overlook you? Good to see you. I'm going to make one

12:19PM 16 exception. I'm going to give you just a few minutes. There have

12:19PM 17 been a number of phone calls received -- I have not spoken to

12:19PM 18 anyone, but there were a number of phone calls made by either

12:19PM 19 Ms. -- I don't know who made them, but on behalf of Ms. Keeps

12:19PM 20 Eagle. There have been a number of calls made requesting an

12:19PM 21 opportunity for either Ms. Keeps Eagle to speak or someone on her

12:19PM 22 behalf to speak, and she is a named plaintiff, so I'm going to

12:19PM 23 carve out that one exception and invite her up to tell me

12:19PM 24 whatever she wants to tell me in open court. And I can't give

12:19PM 25 you a lot of time, but I do want to do that. And then I'll ask

12:19PM I the attorneys to respond to Ms. Keeps Eagle's statement. And
12:19PM 2 again, it's very likely -- I know I said highly likely -- it's
12:19PM 3 very likely that there will be an appropriate opportunity for
12:20PM 4 others to speak at the appropriate time, and we'll talk about
12:20PM 5 that, but right now I want to hear from Ms. Keeps Eagle. I want
12:20PM 6 to welcome her to the Court and I want to hear from her, and
12:20PM 7 would you like to come forward.
12:20PM 8 How are you? You can have the microphone there, if you
12:20PM 9 would like. If you're more comfortable being seated and speaking
12:20PM I10 at a mic, that's fine as well, whatever is more comfortable for
12:20PM I11 you. How are you? How are you this morning?
12:20PM I12 MRS. KEEPS EAGLE: Good afternoon, Your Honor.
12:20PM I13 THE COURT: This afternoon, how are you today?
12:20PM I14 MRS. KEEPS EAGLE: Thank you for allowing --
12:20PM I15 THE COURT: Go ahead. It's good to see you, as always.
12:20PM I16 You've been a mainstay in this case. You and I have been
12:20PM I17 mainstays and maybe a few others since 1999. Good to see you
12:20PM I18 again. What would you like to say?
12:20PM I19 MRS. KEEPS EAGLE: Your Honor, I'm here today to speak for
12:21PM 20 all the plaintiffs in the Keeps Eagle lawsuit. I -- my husband
12:21PM 21 and I represent this lawsuit. My husband was unable to make this
12:21PM 22 trip due to health issues.
12:21PM 23 THE COURT: Please give him my regards. It's always been
12:21PM 24 a pleasure to see him here as well over the years.
12:21PM 25 MRS. KEEPS EAGLE: Yes.

12:21PM 1 THE COURT: Please give him my regards, and I hope he has
12:21PM 2 a speedy recovery, all right, a full recovery.

12:21PM 3 MRS. KEEPS EAGLE: Yes, thank you. George and I discussed
12:21PM 4 all the matters in this lawsuit and why we do not support a
12:21PM 5 foundation. We would like to have the remainder of the funds be
12:21PM 6 paid to all the class members of this lawsuit. We have been
12:22PM 7 discriminated against by USDA for 40 years, and that's so
12:22PM 8 undescribable, how we were treated, and we know that many other
12:22PM 9 plaintiffs have gone through the same thing that we have
12:22PM 10 experienced. So what I'm going to ask today is -- we would like
12:22PM 11 to have the remainder of the funds be paid to the class members
12:22PM 12 today, not tomorrow. They deserve this money.

12:22PM 13 And we would also feel that we are receiving justice.
12:23PM 14 Many of us are elderly, beyond retirement age. We can't wait any
12:23PM 15 longer, Your Honor. So, time is of the essence. Many people are
12:23PM 16 hurting today because of what happened. Discrimination is a
12:23PM 17 terrible thing to experience, and not anybody should go through
12:23PM 18 that. So I am requesting, Your Honor, to listen to us and help
12:24PM 19 our plaintiffs. There are many of them, like 3600, who are
12:24PM 20 involved in this lawsuit. Many of them, their dreams and
12:24PM 21 aspirations have been shattered by foreclosure of their ranches
12:24PM 22 and farms. Many of them are old. Some of them are still living
12:24PM 23 the old way hauling wood, hauling water. They told me that they
12:24PM 24 appreciated the payment that they got, they're grateful, but they
12:25PM 25 saw this large amount of money at one of the listing sessions

12:25PM I that I attended, and they said, "why couldn't we have some of
12:25PM 2 that? Please help us." So I told them that I would do
12:25PM 3 everything I could. My husband at that time did not attend this
12:25PM 4 meeting, but I did. We -- there's many of the elderlies who are
12:25PM 5 suffering in that manner. They are poor people. In fact, all of
12:25PM 6 us are poor, and we worked hard for what we have. My complaint
12:26PM 7 here today also is my husband was forced into selling land so he
12:26PM 8 could make a payment to the USDA and then was also threatened.
12:26PM 9 Selling his live stock, selling his equipment, his feed, possibly
12:26PM 10 taking our home, and Your Honor -- and they also told him that
12:26PM 11 they would garnish my wages. I, too, was a federal employee
12:26PM 12 working for the Department of Interior. I worked there for 52
12:26PM 13 years, and I retired when this lawsuit became a settlement. They
12:27PM 14 agreed that they would settle it, so then I retired, and I'm
12:27PM 15 happy that I worked for the government that long. And then also
12:27PM 16 George and I have been married for 54 years, so I suffered with
12:27PM 17 him when USDA came to our home and threatened him. So, he sold
12:27PM 18 land to the tribe, and thank goodness the Standing Rock Sioux
12:27PM 19 Tribe, my tribe, helped us and purchased our land so USDA could
12:27PM 20 have their money, and we felt that wasn't right, and my husband
12:27PM 21 said, "do you think we would have a chance to sue the government?
12:28PM 22 Why not? Let's try it." Not only that, we received a telephone
12:28PM 23 call shortly after we were going to file or we filed for -- on
12:28PM 24 this lawsuit, and we were also told by the caller, "How can you
12:28PM 25 people sue the government? You're wards of the government." So

12:28PM I I said, "We are entitled to justice, and I, too, am a government
12:28PM 2 employee," and by that time he hung up on me. So, I mean, that's
12:28PM 3 just how people feel about us, you know, that we're hopeless and
12:28PM 4 we're helpless. That's how they feel and they don't understand
12:29PM 5 how we are treated, a lot of people, the nonIndian.
12:29PM 6 THE COURT: Well, I do, and you know that, and I've been
12:29PM 7 presiding over this case for 15 years, and for those who you
12:29PM 8 claim are hopeless and helpless, they shouldn't feel that way in
12:29PM 9 my courtroom, and you know that. And you know, I understand
12:29PM I0 about discrimination. I'm a federal judge, but that does not
12:29PM I1 mean that I've not been discriminated against either. I know it
12:29PM I2 hurts. Of course it hurts. But I wanted to afford you the
12:29PM I3 opportunity to speak, and you did so as eloquently as you have
12:29PM I4 spoken in the past and as passionately as you have spoken in the
12:29PM I5 past, and what I would like to do now is share a few thoughts
12:29PM I6 with the attorneys about what you just said, all right, and I
12:30PM I7 firmly believe that there will be other opportunities for us to
12:30PM I8 engage in discussions in this courtroom. I know you've called
12:30PM I9 and others have called and wanted to talk to me. I got those
12:30PM 20 messages, but it would have been probably -- well, not probably,
12:30PM 21 it would not have been appropriate for me to do that, but it
12:30PM 22 wasn't as if my staff members, my lawyers were not sensitive to
12:30PM 23 the many calls placed by you and others on your behalf and maybe
12:30PM 24 others in the courtroom. We received all the calls and all the
12:30PM 25 letters, and every time I write on there, "let this be filed,"

12:30PM I and it's after I read what someone has written, so it's -- that's
12:30PM 2 my writing. No one can duplicate my bad penmanship, so when I
12:30PM 3 sign it, that's me signing it. No one signs it on my behalf.
12:30PM 4 Let it be filed. I read it. So I have read everything that
12:30PM 5 people have sent me, and I appreciate all the comments and
12:31PM 6 writing and the call -- people have called and left messages as
12:31PM 7 well. I can't respond to them, as you know, but it's not as if
12:31PM 8 I've not received them, so -- so, anyway, welcome again to the
12:31PM 9 Court. I want to have a discussion -- you're a named plaintiff.
12:31PM 10 You can sit in the well of the court if you want to. You can sit
12:31PM 11 up here. You can sit wherever you want to sit, except my chair,
12:31PM 12 all right. You can sit anywhere you want to sit, but you're a
12:31PM 13 plaintiff. I understand there's some disagreement between you
12:31PM 14 and class counsel, but if you wish to sit with class counsel,
12:31PM 15 that's fine. You can sit wherever you want to sit in the well of
12:31PM 16 the court, all right.
12:31PM 17 MRS. KEEPS EAGLE: Yes.
12:31PM 18 THE COURT: All right. Go ahead.
12:31PM 19 MRS. KEEPS EAGLE: I would like to also say one thing.
12:31PM 20 With the Cypress Funds, we are not in favor of a foundation. For
12:31PM 21 our reason, a foundation would be another way of discrimination,
12:32PM 22 because not all people are going to benefit, so I would like to
12:32PM 23 request that the funds, the leftover funds be paid to all the
12:32PM 24 class members of this lawsuit so we can move on with our lives.
12:32PM 25 THE COURT: I hear that loud and clear.

12:32PM I MRS. KEEPS EAGLE: There is a need. My people are
12:32PM 2 suffering, and the money is there and we would like to have it,
12:32PM 3 Your Honor.

12:32PM 4 THE COURT: All right. Thank you. Let me ask you a
12:32PM 5 question. You're very intelligent, very eloquent -- an eloquent
12:32PM 6 person. I'm not sure you're an attorney. You don't have to be
12:32PM 7 an attorney to represent yourself. You do a pretty good job
12:32PM 8 about representing yourself and speaking out about causes that
12:33PM 9 are very important to you. Have you thought about speaking to an
12:33PM I0 attorney about your request that you just made to me?

12:33PM I1 MRS. KEEPS EAGLE: Well, yes we did. We spoke to class
12:33PM I2 counsel. They called us.

12:33PM I3 THE COURT: Right.

12:33PM I4 MRS. KEEPS EAGLE: And they wanted --

12:33PM I5 THE COURT: I understand there's a fundamental
12:33PM I6 disagreement between what you would like to see happen and what
12:33PM I7 class counsel is recommending. I understand that.

12:33PM I8 MRS. KEEPS EAGLE: Right. And they brought up the
12:33PM I9 foundation. At first we supported it, and the second conference
12:33PM 20 call my husband said "No, I oppose it," for the simple reason we
12:33PM 21 do not want to abandon the class members. That was the reason.

12:33PM 22 THE COURT: I understand. That comes through loud and
12:33PM 23 clear.

12:33PM 24 MRS. KEEPS EAGLE: Yes.

12:33PM 25 THE COURT: All right. Okay. All right. Thank you.

12:34PM I It's always been a pleasure. You can have a seat anywhere you

12:34PM 2 would like to in the well of the court, all right.

12:34PM 3 MRS. KEEPS EAGLE: Yes.

12:34PM 4 THE COURT: And I want to give the attorneys an

12:34PM 5 opportunity to respond to what you've said.

12:34PM 6 Let me do this. Before I give the attorneys an

12:34PM 7 opportunity, let me take a short recess, no more than five

12:34PM 8 minutes. The courtroom is packed. I'm not going to keep you

12:34PM 9 folks here, although it's more pleasant here than outside in the

12:34PM I0 rain. You're welcome to stay as long as you want to. Let me

12:34PM I1 take about a five-minute recess. I want to speak with my

12:34PM I2 attorneys just for a second. No need to stand.

12:34PM I3 (Thereupon, a recess in the proceedings occurred from

12:37PM I4 12:34 p.m. until 12:37 p.m.)

12:37PM I5 THE COURT: Let me just say a few things and then I'll

12:37PM I6 give the attorneys an opportunity to respond, not only to what

12:37PM I7 the Court says but if they want to to what Ms. Keeps Eagle said.

12:38PM I8 The purpose of this hearing is to address the most recent

12:38PM I9 submissions filed in response to the Court's questions, the Court

12:38PM I10 having previously ruled on the request to intervene and denying

12:38PM I11 that, and I don't want to lose track of that, but nevertheless, I

12:38PM I12 think it was appropriate to afford Ms. Keeps Eagle an opportunity

12:38PM I13 to, again, as she has many times over the years, to speak and to

12:38PM I14 express her opinions about this lawsuit and about this issue that

12:38PM I15 is pending before the Court, and what I hear Ms. Keeps Eagle

12:39PM I saying, and she's not an attorney and I recognize that, and she
12:39PM 2 didn't need to be an attorney to very eloquently express her
12:39PM 3 dissatisfaction with proposals that have been made to the Court
12:39PM 4 for the distribution of surplus funds. She essentially said she
12:39PM 5 wants relief from that, that she wants relief from the judgment
12:39PM 6 that the Court's approved, and it's her request for relief, and I
12:39PM 7 think that at the very least she should be afforded an
12:39PM 8 opportunity to develop that request for relief from judgment, and
12:39PM 9 she should -- the inequity, if there is an inequity, the inequity
12:39PM 10 is that she doesn't have, as I understand it, she doesn't have
12:39PM 11 and she doesn't need to have, she doesn't have the benefit of
12:39PM 12 experienced counsel to put her on the same footing with
12:40PM 13 experienced counsel representing the government, representing the
12:40PM 14 class members. She's a disgruntled class member who has a
12:40PM 15 fundamental disagreement with class counsel, and she's not by
12:40PM 16 herself. I don't know what the numbers are. I don't know how
12:40PM 17 many other class members share her belief, but I'd be shocked if
12:40PM 18 she's the only one. We know her husband is also a class member.
12:40PM 19 He shares her belief. He shares her view, her opinion, and I'm
12:40PM 20 sure there are others. So, from my vantage point, it seems to me
12:40PM 21 that those who have this fundamental disagreement with the
12:40PM 22 position that class counsel is advocated that pleases some
12:40PM 23 members of the class but displeases others, it seems to me that
12:40PM 24 those with that differing opinion should be afforded an
12:41PM 25 opportunity to develop their theory. I'm not suggesting at all

12:41PM I by any stretch of the imagination that the theory has legal
12:41PM 2 support. I don't know. But I very clearly heard her tell me in
12:41PM 3 her words very eloquently, as she is, that she wants relief from
12:41PM 4 this judgment which sounds like a Rule 60(b) motion. So, the
12:41PM 5 thought then is, what should the Court do at this juncture to
12:41PM 6 enable her to develop her theory? I'm not going to lose sight of
12:41PM 7 the fact that she's without individual counsel, from what I can
12:41PM 8 determine based on our brief discussion in open court.

12:41PM 9 Is there a basis for -- is there an opportunity for
12:41PM I10 Ms. Keeps Eagle and those others disgruntled to hire counsel, to
12:41PM I11 retain counsel, to receive the benefit of appointed counsel to
12:42PM I12 enable them to essentially pursue their request for relief from
12:42PM I13 this judgment? That's clearly what she said. I want relief. I
12:42PM I14 don't agree with it. I want something else. But she doesn't
12:42PM I15 have an attorney.

12:42PM I16 So, the first thing is, I think, for the attorneys to
12:42PM I17 briefly respond to what she had to say, and the second thing is
12:42PM I18 for the Court to determine what's fair and appropriate going
12:42PM I19 forward to enable Ms. Keeps Eagle and the other disgruntled
12:42PM I20 members of the class to develop their theories, their legal
12:42PM I21 theories for relief. Again, not recognizing that there's a legal
12:42PM I22 theory that has merit. I don't know. I don't know what they
12:42PM I23 would file. That's all I think I need to say at this point.
12:42PM I24 I'll listen to either Mr. Sellers or government counsel or anyone
12:43PM I25 else, but I clearly heard her to request relief from judgment.

12:43PM I So counsel.

12:43PM 2 MR. SELLERS: Good afternoon, Your Honor. Joseph Sellers
12:43PM 3 for the plaintiffs. I have a few thoughts about the comments you
12:43PM 4 just made, and if you would like to hear any comments about the
12:43PM 5 subject you scheduled for today about notice, I'm happy to
12:43PM 6 address that, too, now or later.

12:43PM 7 THE COURT: Let's focus on Ms. Keeps Eagle for now. I
12:43PM 8 started off -- I could have focused on -- everyone has answered
12:43PM 9 the questions. I read the answers. I have my thoughts, but you
12:43PM I0 know, when I was -- I think it was appropriate to afford her an
12:43PM I1 opportunity to speak, so let's focus on that first, and then
12:43PM I2 we'll focus on the other reason why we're all here today.

12:43PM I3 MR. SELLERS: All right. Well, certainly --

12:43PM I4 THE COURT: And it's a status hearing, too, folks, by the
12:43PM I5 way, unless someone thinks something else was to be accomplished
12:43PM I6 today. It's a status hearing. For those in the gallery who
12:44PM I7 thought otherwise, it's a status hearing and only to discuss
12:44PM I8 where we go from this point, so I think it's highly appropriate
12:44PM I9 to factor in Ms. Keeps Eagle's comments.

12:44PM 20 MR. SELLERS: Yes, I agree. So let me begin by saying
12:44PM 21 Ms. Keeps Eagle and I have worked together for over a decade on
12:44PM 22 this case. We have been in the trenches together. She's been
12:44PM 23 with class counsel, other members of class counsel, and we have
12:44PM 24 worked closely together, and we have nothing but the highest
12:44PM 25 regard for her, for her husband George, and for the other class

12:44PM I representatives and for the many members of this class who have
12:44PM 2 been pursuing this case for many, many years. And I think that
12:44PM 3 the settlement -- put aside the present dispute -- I think the
12:44PM 4 settlement that we achieved is quite significant, and I think
12:44PM 5 Ms. Keeps Eagle agrees or would agree with that.

12:44PM 6 We are acutely aware of the pervasive discrimination that
12:45PM 7 members of this class have suffered over the years, and some may
12:45PM 8 continue to be suffering, and certainly if not the present
12:45PM 9 discrimination, the longstanding affects of that discrimination,
12:45PM I10 and so this is -- we don't disagree for a minute about the
12:45PM I11 extensive poverty and the suffering that members of this class
12:45PM I12 have and many continue to encounter, as a result of their
12:45PM I13 financial circumstances they've been left in.

12:45PM I14 So that's the first thing. The second thing is we are --
12:45PM I15 I think this may go somewhat to the notice issue, but we are
12:45PM I16 counsel for the entire class, and the Court appointed us to that
12:45PM I17 role. As the Court is aware, there are times when some members
12:45PM I18 of the class and even some leaders of the class differ with each
12:45PM I19 other about what's in the best interest of the class. We are
12:45PM I20 confronted with such a situation now. We have other class
12:46PM I21 representatives who strongly support the course of action that
12:46PM I22 was -- that is presently proposed by the class counsel and the
12:46PM I23 plaintiffs before the Court. I recognize that Marilyn and George
12:46PM I24 Keeps Eagle no longer support that position, and we have tried to
12:46PM I25 reflect in our papers that they no longer support that position.

12:46PM I I don't think we have -- we haven't developed the legal theory
12:46PM 2 because I am not sure I frankly understand the legal theory,
12:46PM 3 although I certainly can envision some way of doing that, and we
12:46PM 4 can discuss how we might either be able to assist them or find
12:46PM 5 somebody else who can assist them in developing their legal
12:46PM 6 theory so that the Court has the benefit of a coherent legal
12:46PM 7 presentation that amplifies on the eloquent remarks that
12:46PM 8 Ms. Keeps Eagle --

12:46PM 9 THE COURT: You raise a very interesting issue and one we
12:46PM I0 have not researched either, and the issue is whether or not and
12:46PM I1 under what circumstances disgruntled members of a class can,
12:46PM I2 indeed, seek relief from a judgment that they agreed to and that
12:47PM I3 was approved by the Court.

12:47PM I4 MR. SELLERS: Right.

12:47PM I5 THE COURT: It sounds like a classic Rule 60(b) with a
12:47PM I6 twist there because she's not the individual plaintiff, she's a
12:47PM I7 member of a class that approved this, but she's disgruntled, and
12:47PM I8 she has a voice, a very powerful voice, so I think my duty is to
12:47PM I9 afford her an opportunity to speak, but an appropriate
12:47PM I10 opportunity, and it's difficult, but I hear her clearly. I know
12:47PM I11 what she's saying, but then to focus that and put it into a legal
12:47PM I12 posture for the Court to address is somewhat challenging.

12:47PM I13 MR. SELLERS: Right. So, I mean, I -- and I certainly
12:47PM I14 agree with Your Honor. I've had other cases in the past where
12:47PM I15 there's been divergence of views amongst the leaders of a case on

12:47PM I how to proceed. Often we can resolve the differences and we make
12:47PM 2 clear to the Court the differing positions the parties -- the
12:47PM 3 leaders of the case have. I think we have made that point clear.
12:48PM 4 As you know, the Great Plains claimants as amicus are advancing a
12:48PM 5 position that appears to be very similar to the one Mrs. Keeps
12:48PM 6 Eagle is presenting here in the sense that they want the money to
12:48PM 7 be sent to the successful claimants. As we've made clear, and we
12:48PM 8 made it clear in other hearings, and we certainly made it clear
12:48PM 9 in our papers, that was a position that we presented to the
12:48PM I10 Department of Agriculture. It is one that they rejected.

12:48PM I11 THE COURT: I recall that.

12:48PM I12 MR. SELLERS: And we understand, as we read the agreement,
12:48PM I13 that without the agreement of the Department of Agriculture and
12:48PM I14 the approval of the Court, that change is not a change that can
12:48PM I15 be made. There may be some legal theory of which we are unaware
12:48PM I16 that might persuade the Court over the objection of the USDA to
12:48PM I17 make that change and allow the funds to be distributed, but we
12:48PM I18 have worked within the confines of what we have attempted to do
12:48PM I19 through an agreement with the USDA on how to appropriately
12:49PM I20 dispose of the unclaimed settlement funds, and we think the
12:49PM I21 approach that we've taken is -- will still benefit many of those
12:49PM I22 who are in the courtroom today and others. It is not -- it
12:49PM I23 really is, as the Court recognized in the -- in its rulings
12:49PM I24 recently on the intervention motions, intended to serve the true
12:49PM I25 purpose of the Syprey serving the broader community on whose

12:49PM I behalf this case was brought.

12:49PM 2 In further response to your question about Mrs. Keeps

12:49PM 3 Eagle and her legal interests, I would be happy to meet with

12:49PM 4 Mrs. Keeps Eagle after this hearing, talk to her about whether

12:49PM 5 there is some way that we or someone else that we could refer her

12:49PM 6 to could work with her on developing her interests in the form of

12:49PM 7 something that could be presented to the Court in a more formal

12:49PM 8 legal fashion to set forth the best arguments that can be amassed

12:49PM 9 on her behalf and that of her husband. I do think there are some

12:49PM I0 very difficult questions about whether -- after all, she and her

12:50PM I1 husband have -- and the other claimants have received relief

12:50PM I2 through this case, and I don't think any of them are expecting to

12:50PM I3 relinquish their relief that they received, so it's not the

12:50PM I4 traditional rescission of an agreement that I think they are

12:50PM I5 seeking, as I understand it, but something of a different sort.

12:50PM I6 And anyway, I'm happy to be of assistance to the Court any

12:50PM I7 way we can. I have nothing but the highest regard for Mrs. Keeps

12:50PM I8 Eagle and her husband, and if we can help bring their views to

12:50PM I9 the Court more effectively so we can assess what to do, we're

12:50PM I10 happy to do that.

12:50PM I11 THE COURT: Thank you. Thank you, counsel.

12:50PM I12 Is that something that you might be interested in,

12:50PM I13 Mrs. Keeps Eagle?

12:50PM I14 MR. SELLERS: She didn't hear Your Honor.

12:50PM I15 THE COURT: I'm sorry. I guess my question to you was

12:50PM I whether or not Mr. Sellers' offer to meet with you and
12:50PM 2 potentially suggest other attorneys who could help you present
12:51PM 3 your legal challenge to this issue, is that something that you
12:51PM 4 would be interested in doing?
12:51PM 5 MR. SELLERS: I'm sorry. She may not fully understand.
12:51PM 6 May I just --
12:51PM 7 THE COURT: Right. We'll come back to it. We'll come
12:51PM 8 back to it.
12:51PM 9 Counsel, would you like to be heard? Good afternoon.
12:51PM 10 MR. SANDBERG: Good afternoon, Your Honor.
12:51PM 11 THE COURT: Good afternoon, counsel.
12:51PM 12 MR. SANDBERG: With respect to the development of
12:51PM 13 Ms. Keeps Eagle's arguments, I don't know if I have much to say
12:51PM 14 other than she stands to stand in a similar position to the Great
12:51PM 15 Plains plaintiffs. As Mr. Sellers says, they, too, claimed to be
12:51PM 16 sort of, as you said, disgruntled class members, successful
12:51PM 17 claimants who aren't happy with their settlement. So, to the
12:51PM 18 extent intervention is necessary, I don't know why she would
12:51PM 19 stand in a different stead than they do, and obviously the Court
12:51PM 20 denied their request for intervention. But as for developing
12:51PM 21 those and having her file her own motion, I don't really have
12:52PM 22 anything to add to that.
12:52PM 23 On the other issue, which I guess would be Ms. Keeps
12:52PM 24 Eagles' --
12:52PM 25 THE COURT: You raise an interesting question, whether or

12:52PM I not she needs to intervene if, indeed, she's a member of a class
12:52PM 2 who received some relief, I query whether a basis exists for an
12:52PM 3 individual to file a Rule 60(b) motion. She's in the lawsuit.

12:52PM 4 MR. SANDBERG: Yeah. The parties haven't -- the Great
12:52PM 5 Plains claimants sought intervention. The parties did not
12:52PM 6 address whether they needed to intervene. We had a footnote
12:52PM 7 where we explicitly said that.

12:52PM 8 THE COURT: I know. I recall that footnote.

12:52PM 9 MR. SANDBERG: So that issue hasn't --

12:52PM I0 THE COURT: It's an issue that obviously has been
12:52PM I1 discussed by the parties and it's been referred to in pleadings,
12:52PM I2 but she's essentially making the same play. At least -- I --
12:52PM I3 it's my opinion that she's making the same request, relief from
12:52PM I4 judgment, so -- and she's not an attorney, so I have to construe
12:53PM I5 her request very broadly, and I will do so.

12:53PM I6 MR. SANDBERG: Understood. With respect to Ms. Keeps
12:53PM I7 Eagle's statement, I don't know if you wanted us to address the
12:53PM I8 substance of that or if it's maybe more properly addressed if she
12:53PM I9 develops and files her argument.

12:53PM 20 THE COURT: Yeah, I think what I need to do is to give
12:53PM 21 some thought to -- and I appreciate Mr. Sellers' suggestion. Do
12:53PM 22 you have an opinion as to whether or not there's a basis under
12:53PM 23 this class settlement with the government for an individual
12:53PM 24 similarly situated to Mrs. Keeps Eagle to receive financial
12:53PM 25 assistance to retain counsel if she shares a fundamental

12:53PM 1 disagreement with class counsel? I mean, she's a member of the
12:53PM 2 class.

12:53PM 3 MR. SANDBERG: I'm sorry, Your Honor, I'm not sure I
12:53PM 4 follow. Is the question whether there's some way to fund counsel
12:53PM 5 through the agreement?

12:53PM 6 THE COURT: Yes.

12:53PM 7 MR. SANDBERG: I know of no way to fund counsel through
12:53PM 8 the agreement. I mean, I think we already funded counsel, class
12:54PM 9 counsel.

12:54PM 10 THE COURT: Right, but that doesn't resolve -- that
12:54PM 11 doesn't address this issue, though, because now there's a
12:54PM 12 fundamental disagreement.

12:54PM 13 MR. SANDBERG: Yeah, but I think that's the only counsel
12:54PM 14 that funding was provided for. I don't know if you wanted me to
12:54PM 15 address anything else.

12:54PM 16 THE COURT: All right. Thank you. Mrs. Keeps Eagle, let
12:54PM 17 me ask you this. Would you like an opportunity to try and obtain
12:54PM 18 counsel to represent you, individual counsel to represent you?

12:54PM 19 MRS. KEEPS EAGLE: Yes.

12:54PM 20 THE COURT: All right. All right. I think, at the very
12:54PM 21 least, I should give you an opportunity to do that. I'm going to
12:54PM 22 encourage you to speak with Mr. Sellers. I mean, he's an
12:54PM 23 honorable person. He represents the class. You disagree with
12:54PM 24 the recommendations, but he may be in a position to recommend an
12:54PM 25 attorney or firm or attorneys to represent you recognizing that,

12:54PM I you know, they will be engaged in litigation, but I would not
12:54PM 2 just dismiss his suggestions in that regard because he is an
12:55PM 3 honorable person and he's an officer of the court.

12:55PM 4 And I think I should probably leave it at that for the
12:55PM 5 time being. How much time do you think you might need? And
12:55PM 6 that's a difficult question to ask you. I think I should just
12:55PM 7 give you a reasonable period of time, which I think is not
12:55PM 8 even -- that's not easy either -- maybe a month or two to get an
12:55PM 9 attorney to represent you.

12:55PM I0 MRS. KEEPS EAGLE: As soon as possible, Your Honor.

12:55PM I1 THE COURT: Right, yeah. Mr. Sellers.

12:55PM I2 MR. SELLERS: Your Honor, if I could be helpful. I'm
12:55PM I3 happy to meet with Mrs. Keeps Eagle after our hearing today, our
12:55PM I4 status conference, and see -- I know she's leaving town later
12:55PM I5 today, but either this afternoon or by phone to see if I can line
12:55PM I6 up a lawyer here in town who would be able to confer with her and
12:56PM I7 her husband. And I can't promise who's going to be available and
12:56PM I8 how quickly they can proceed.

12:56PM I9 THE COURT: No, I understand that. If you could let the
12:56PM 20 Court know.

12:56PM 21 MR. SELLERS: I would move right away on this.

12:56PM 22 THE COURT: That's a very generous suggestion. He's under
12:56PM 23 no legal obligation to do that, but you two have had a
12:56PM 24 relationship over the past decade or so, I understand that, a
12:56PM 25 professional relationship, and I encourage you to speak with

12:56PM I Mr. Sellers. He's not going to leads you astray. If anything,
12:56PM 2 he's going to find someone competent to represent you, and that's
12:56PM 3 consistent with justice, all right. He would do the same thing I
12:56PM 4 could do. If he can't find anyone, then he'll tell me, and then
12:56PM 5 the Court will.

12:56PM 6 MR. SELLERS: I will.

12:56PM 7 THE COURT: The Court will attempt to do something, but
12:56PM 8 it's not like I have an army of lawyers lined up either, all
12:56PM 9 right.

12:56PM 10 MRS. KEEPS EAGLE: Thank you, Your Honor.

12:56PM 11 THE COURT: But I encourage you to speak with him after
12:56PM 12 this hearing. Let me do one other thing. I'll take another --
12:56PM 13 the pleadings speak for themselves. I don't want to get
12:56PM 14 sidetracked on that because I may have to step back from where we
12:56PM 15 are right now just to address Mrs. Keeps Eagle's representations,
12:57PM 16 and that's fine, too. Whatever I'm going to do, I can tell
12:57PM 17 you -- people may disagree with the final outcome, but it's going
12:57PM 18 to be consistent with the fair administration of justice. We
12:57PM 19 aren't there yet, and I want to give you a full opportunity to
12:57PM 20 develop your theory with the help of an attorney, all right.

12:57PM 21 MRS. KEEPS EAGLE: Yes.

12:57PM 22 THE COURT: Again, I'm not guaranteeing you'll be
12:57PM 23 successful, but at least you'll have the opportunity to be heard,
12:57PM 24 and no one can disagree with that being a hallmark of justice,
12:57PM 25 the opportunity to be heard by a judge. The judge may disagree

12:57PM I with you, but it's really disagreeable if you don't have an
12:57PM 2 opportunity to be heard, so you're going to have the opportunity
12:57PM 3 to be heard again, all right.

12:57PM 4 MRS. KEEPS EAGLE: Thank you.

12:57PM 5 THE COURT: Let me just take another five minutes to speak
12:57PM 6 with my staff about timeframes, and if you want to talk with
12:57PM 7 Ms. Keeps Eagle now, that's fine. Again, there's no reason to
12:57PM 8 stand. I'm not going to keep these folks long.

12:58PM 9 (Thereupon, a recess in the proceedings occurred from
12:59PM 10 12:58 p.m. until 12:59 p.m.)

12:59PM 11 THE COURT: All right, counsel. I'm not going to put in
12:59PM 12 place any timetable right now. I'm just going to adjourn in a
01:00PM 13 few minutes. I'm going to not focus on the remaining issues that
01:00PM 14 brought everyone to court. They've been fully briefed. We're
01:00PM 15 not there yet, to talk about finalization. I'm serious and
01:00PM 16 sincere when I say that I want to afford Mrs. Keeps Eagle an
01:00PM 17 opportunity to develop her theory, and again I appreciate your
01:00PM 18 kind offer, Mr. Sellers.

01:00PM 19 So, I'm going to adjourn this hearing. I'm not going to
01:00PM 20 schedule any other hearings. If, indeed, Mr. Sellers is able to
01:00PM 21 recommend to Mrs. Keeps Eagle the name of an attorney or
01:00PM 22 attorneys or firm to represent her and her husband and
01:00PM 23 potentially other disgruntled members of the class, then at some
01:00PM 24 point the Court may schedule a status hearing to hear from them
01:00PM 25 and to request from them their thoughts about further proceedings

01:01PM I and how further proceedings should develop and should be
01:01PM 2 conducted by the Court. And I've said enough. I've said all I
01:01PM 3 need to say today. I'm not going to take anything under
01:01PM 4 advisement. There's really nothing to take under advisement
01:01PM 5 right now, but we're not going to proceed forward with either a
01:01PM 6 fairness hearing or another sort of hearing to enable people to
01:01PM 7 be heard. I will say this: At the end of the day, there's going
01:01PM 8 to be an opportunity for people to be heard at some point,
01:01PM 9 whether it be in the form of a fairness hearing. It's doubtful,
01:01PM 10 but there will be a venue for an opportunity for people to be
01:01PM 11 heard with respect to any final decision regarding the
01:01PM 12 distribution of surplus funds, but we aren't there yet, and
01:02PM 13 this -- Mrs. Keeps Eagle's issue is paramount to the Court right
01:02PM 14 now, and I want to give her an opportunity to develop it and for
01:02PM 15 the Court to resolve it in an appropriate fashion. So that's all
01:02PM 16 I have to say. Anything further from counsel?

01:02PM 17 MR. SELLERS: Your Honor, I just conferred with Mrs. Keeps
01:02PM 18 Eagle during the break, and I wanted to -- Mrs. Keeps Eagle has
01:02PM 19 authorized me to tell you that she's going to come back to our
01:02PM 20 office right after this conference and we'll call some lawyers
01:02PM 21 and hopefully, if we can, arrange for her to meet with someone
01:02PM 22 before she leaves.

01:02PM 23 THE COURT: Thank you. We're going to try to move on this
01:02PM 24 right away. That's a very generous gesture on your part. All
01:02PM 25 right. Good luck to you. It's good to see you again.

01:02PM 1 MRS. KEEPS EAGLE: Thank you.

01:02PM 2 THE COURT: You travel safely, and my regards to your

01:02PM 3 husband, all right, and I'm sure we'll talk again. I have no

01:02PM 4 doubt about that, all right. Take care, and everyone travel

01:02PM 5 safely. Thank you.

01:02PM 6 (Proceedings adjourned at 1:02 p.m.)

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C E R T I F I C A T E

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I, Scott L. Wallace, RDR-CRR, certify that
the foregoing is a correct transcript from the record of
proceedings in the above-entitled matter.

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/s/ Scott L. Wallace

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Scott L. Wallace, RDR, CRR
Official Court Reporter

Date

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