

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

**RAMAH NAVAJO CHAPTER,
OGLALA SIOUX TRIBE, and PUEBLO
OF ZUNI**, for themselves, and on behalf of
a Class of others similarly situated,

Plaintiffs,

v.

SALLY JEWELL, Secretary of the
Interior, *et al.*,

Defendants.

No. 90-cv-957-JAP/KBM

**CONSENT MOTION TO APPROVE
DISTRIBUTION OF SHARE OF NO-LONGER-EXISTENT
RESERVATION FIRE PROTECTION DISTRICT**

Plaintiffs, by and through Class Counsel, move the Court for an Order providing for the distribution of the share amount of the no-longer-existent Reservation Fire Protection District (RFPD). Class Counsel ask that RFPD's share be divided equally among the ten Class Members that authorized the RFPD to contract under the Indian Self-Determination Act (ISDA), 25 U.S.C. 5301 *et seq.* Plaintiffs have conferred with Defendants, and Defendants consent to the motion.

In support of this motion, Plaintiffs state as follows:

1. RFPD is identified as Class Member No. 512, with a share of the Net Settlement Amount before Treasury deductions of \$32,286.90. Class's "Unopposed Motion for Approval of the Reserve Account Amount, the Holdback Amount, the Payment of Costs and Fees to Class Counsel, and the Final Claim Form and Payment

Amounts for Class Members,” Exh., B, at 12, line 512 (Doc. 1361-2, Aug. 15, 2016), approved by this Court’s August 17, 2016, Order (Doc. 1362). RFPD’s Claim Form is attached as Exhibit A hereto.

2. The Bureau of Indian Affairs (“BIA”) has confirmed to Plaintiffs that RFPD no longer exists. E-mail from Government Counsel Ryan Parker to Class Counsel (Sept. 13, 2016), (Exhibit B).

3. RFPD was not a recognized tribe itself, but was instead a tribal organization benefiting a number of tribes. These tribal organizations are allowed to enter into contracts with the Bureau of Indian Affairs (BIA) under the ISDA provided they meet certain requirements. *See* 25 U.S.C. § 5304(l). One of these requirements is that when “a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.” *Id.*

4. RFPD was one such tribal organization, and it was authorized by 10 federally recognized Tribes, all of whom are also Class Members. These ten Tribes are:

- a. Cabazon (Class Member #64, Cabazon Band of Mission Indians);
- b. La Jolla (#283, La Jolla Band of Mission Indians, now known as the La Jolla Band of Luiseño Indians);
- c. Mesa Grande (#325, Mesa Grande Band of Mission Indians, now known as the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation);

- d. Pauma (#447, Pauma Band of Mission Indians, now known as the Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation);
- e. Rincon (#514, Rincon Band of Mission Indians, now known as the Rincon Band of Luiseño Mission Indians of the Rincon Reservation);
- f. San Manuel (#536, San Manuel Band of Mission Indians);
- g. San Pasqual (#537, San Pasqual Band of Mission Indians, also known as the San Pasqual Band of Diegueño Mission Indians);
- h. Santa Ysabel (#222, now known as the Iipay Nation of Santa Ysabel);
- i. Sycuan (#614, Sycuan Band of Mission Indians, now known as the Sycuan Band of the Kumeyaay Nation); and
- j. Viejas (#671, Viejas Band of Mission Indians, now known as the Viejas (Barona Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation).

See Exhibit B.

5. RFPD operated and had contracts with the BIA for some of the years at issue in this suit. However, as noted above, the BIA has confirmed to Plaintiffs that RFPD no longer exists. *Id.*

6. Section II.A.1 of the Final Settlement Agreement (“FSA”) (Doc. No. 1306-1), approved by the Court on February 23, 2016 (Doc. No. 1346, at 48), provides in pertinent part that:

In the event a Class Member no longer exists, such Class Member's rights under this FSA shall belong to such Class Member's successor entity or, in the event no such entity exists, then the Tribe or Tribes by whose authority such nonexistent Class Member contracted or entered into a self-governance funding agreement as defined above.

7. Class Counsel are aware of no potential successor entity. *See* Exhibit B.

8. As Class Members, each of the authorizing Tribes received individual notice of the Final Settlement Agreement and, thus, of the provision quoted in the paragraph 6, above. Affidavit of Virginia M. K. Stanley, Principal, REDW LLC regarding Mailing of Notice of Final Settlement for Class Members (Doc. 1317, Oct. 8, 2015) & Exh. 1 thereto (Doc. 1317-1), at 1, line 46 (Cabazon); *id.* at 5, line 220 (La Jolla); *id.* at 6, line 255 (Mesa Grande); Doc. 1317-2 (continuation of Exh. 1), at 2, line 351 (Pauma); *id.* at 3, lines 415 and 431 (Rincon and San Pasqual); Exh. 2 (Doc. 1317-3), at 1, line 19 (Santa Ysabel); *id.* at 2, line 54 (San Manual); *id.* at 3, line 73 (Viejas).

9. The FSA does not define how the share of a no-longer-existent tribal organization should be divided among the authorizing Tribes. Class Counsel propose dividing the amount equally among the authorizing Tribes. This is the only feasible method for dividing the share amount. Other methods may be possible in theory but would not be possible in practice. For example, although one could imagine dividing the share based on reservation or population size, in practice population and reservation acreage is not static and one would have to decide the point in time during the contract to use for a population count or reservation size assessment (which could vary for different contract periods) and then hope that reservation acreage or accurate population counts existed for that time calculated in the same manner. Moreover, there is no generally

accepted methodology for defining tribal populations or whether the population numbers that should be used are tribal enrollment, service beneficiaries, tribal members residing on the reservation, etc., and no standard methodology for calculating reservation acreage, which may include fee or trust allotments. And while these other methods present thorny problems of research and administration, they offer no assurance of greater justice in the allocation RFPD's share of the Net Settlement Amount.

10. Accordingly, Class Counsel seek an Order dividing RFPD's settlement share equally among the ten authorizing Tribes listed in paragraph 4, above, and allowing Claim Forms to be sent in those amounts to those Tribes.

11. Defendants have been consulted and consent to this Motion.

WHEREFORE, for the foregoing reasons, Class Counsel respectfully move for an Order:

(1) authorizing Class Counsel and the Settlement Administrator to divide the Reservation Fire Protection District's \$32,286.90 share equally among the ten Tribes that authorized that the Reservation Fire Protection District to enter into ISDA contracts, those Tribes being:

- a. Cabazon Band of Mission Indians;
- b. La Jolla Band of Luiseño Indians;
- c. Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation;
- d. Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation;

- e. Rincon Band of Luiseño Mission Indians of the Rincon Reservation;
- f. San Manuel Band of Mission Indians;
- g. San Pasqual Band of Diegueño Mission Indians);
- h. Iipay Nation of Santa Ysabel;
- i. Sycuan Band of the Kumeyaay Nation; and
- j. Viejas (Barona Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation.

(2) authorizing and directing the Settlement Administrator to send Claim Forms in the amount of \$3,228.69 to each of those authorizing Tribes upon approval of those Claim Forms by the Class Monitor;

(3) authorizing and directing the Designated Bank to pay that amount to each upon its return of the properly-executed Claim Form to the Settlement Administrator and its approval by the Class Monitor; and:

(4) for such other and further relief as the Court deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed electronically pursuant to CM/ECF procedures for the District of New Mexico, which caused the parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

s/ Lloyd B. Miller