

**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

**CLASS COUNSEL FIRST REPORT TO THE COURT ON
THE DISTRIBUTION PROCESS**

COME NOW Class Counsel and hereby submit this First Report to the Court pursuant to § VIII.D.4 of the Final Settlement Agreement (“FSA”) (Doc. No. 1306-1).

REPORT ON THE DISTRIBUTION PROCESS

1. a. This Court approved the FSA on February 24, 2016 (Doc. No. 1346), as amended by its Order of March 3, 2016 (Doc. No. 1350). Implementing banking arrangements were approved by the Court on May 4, 2016 (Doc. No. 1357). By two Orders entered August 17, 2016, the Court (*inter alia*) approved modifications to the Claim Form (Doc. No. 1363) and also approved Class Counsel’s calculations of the Reserve Account and individual Class Member payment amounts (Doc. No. 1362). (The latter Order could not be entered until Treasury had released certain confidential information regarding the Treasury Offset Program.) Following these events, Class

Counsel in August 2016 worked with the Settlement Administrator and the Class Monitor to launch the claims distribution process.

b. As shown in ¶ 4 below, as of the several data compilation dates shown on Exhibits 1 and 2 to the Kenneth Jue Affidavit (Exhibit A), over 96.45% of the Net Settlement Amount (“NSA”) has been distributed to 586 Class Members involving \$831,697,429.79. Another 59 Class Member claims totaling \$14,738,909.76 (over 1.7% of the NSA) have been approved for payment, but have not yet been paid. We have encountered some difficulties in completing distribution to the 54 remaining Class Members collectively involving approximately 1.8% of the NSA (\$15,825,652.01). However, we continue to make progress in completing the distribution for those remaining Class Members.

2. Section VIII.D.4 of the FSA provides *inter alia*:

The Settlement Administrator shall provide to the Court and Parties periodic reports and a final accounting of the distribution of the Net Settlement Amount, the Reserve Account, and costs incurred by Class Counsel and the Settlement Administrator.

Attached as Exhibit A is the Settlement Administrator’s First Periodic Report to the Court, setting forth detailed distribution information as to all Class Members. Exhibit 1 to that Report contains a complete accounting of the Class Member shares paid to date. Because Exhibit 1 contains confidential Treasury Offset Program (TOP) debt collection information, this Exhibit has been filed under seal. Exhibit 2 to the Settlement

Administrator's First Periodic Report only contains non-confidential information, and has therefore not been filed under seal.

3. In September 2016, the Settlement Administrator began sending Claim Forms to Class Members on a rolling basis as information on the Claim Forms was verified for accuracy and vetted by the Class Monitor. Once completed forms were returned, the Settlement Administrator and Class Monitor undertook additional work to assure each Claim Form had been properly completed and executed. Since September 30, 2016, Class Counsel have periodically filed with the Court declarations prepared by the Settlement Administrator and the Class Monitor, all in compliance with the payment verification process set out at ¶ 31 of the payment-authorizing Motion (Doc. No. 1361) approved by the Court on August 17, 2016 (Doc. No. 1362). *See* Notices filed at Doc. Nos. 1372, 1373, 1374, 1375, 1376, 1377, 1381, 1382, 1384, 1392, 1393, 1397, 1399, 1405, 1406, 1411, 1414, and 1423. Each Notice identified the Class Members that had been approved for payment, each Class Member's number, and whether each payment was to be made by wire transfer or check. (The actual approved payment amount for each Class Member was listed in Exhibit C to the Class's Unopposed Motion filed August 15, 2016 (Doc. No. 1361) (filed under seal) and approved by the Court. Doc. No. 1362. That payment data was not repeated in the periodic Notices.)

4. The Settlement Administrator's First Periodic Report (Exhibit A hereto), further documents the status of the distribution process, through the dates of compilation

referenced in the exhibits to that Report. In summary, that Report shows that as of these dates:

a. Class Member Payments. 586 Class Member claims have been paid for a total combined payment of \$831,697,429.79. The word “paid” as used in the Settlement Administrator’s report means that a wire transfer has been completed or a check has been delivered and negotiated by the Class Member. This constitutes 96.455% of the \$862,261,991.56 Net Settlement Amount (NSA), set out at Exhibit C to the Class’s Payment Motion (Doc. No. 1361).

b. Approved Payments Pending. 59 Class Member Claim Forms have been approved for a combined payment of \$14,738,909.76, but have not yet been paid because the Designated Bank has not yet processed the payment, because the Class Member has not yet negotiated the check, or because the Class Member provided defective wire transfer information that has not yet been corrected. This constitutes 1.709% of the NSA.

c. Claim Forms Pending Approval. 12 Class Member Claim Forms have been received, but not yet approved, involving \$8,691,491.60. Some involve Class Members’ failure to document the legal authority of the signatory to sign the Claim Form for that Class Member. In other instances, the Settlement Administrator and the Class Monitor have not yet completed their standard review process. This constitutes 1.008% of the NSA.

d. Claim Forms Not Returned. 19 existing Class Members have been sent Claim Forms which have not yet been returned, totaling in the aggregate \$1,102,481.48. The Settlement Administrator and Class Counsel are contacting these Class Members to encourage submission of the Claim Forms. This constitutes 0.128% of the NSA.

e. Leadership Disputes Precluding Submission of Claim Forms. 5 Class Members have ongoing leadership disputes that have required Class Counsel to file interpleader proceedings pursuant to § VIII.E of the FSA.¹ *See* Affidavit of Beth Verdekal, Exhibit C. These Class Members have not been sent Claim Forms. Instead, Class Counsel have filed complaints-in-interpleader regarding the shares allocated to these Class Members. Currently, Class Counsel and the Settlement

¹ Originally, Class Counsel filed seven complaints-in-interpleader, but two of those have been voluntarily dismissed. *See* Doc. No. 1383 (Newtok Tribe) and Doc. No. 1387 (Death Valley Timbi-Sha Shoshone Tribe).

(b)	#279 Kuigpagmiut, Inc.	\$	538,400.08
(c)	#280 Kuskokwim Native Association	\$	882,946.25
(d)	#289 Lakota Oyate Wakanyeja Owicaki	\$	40,358.62
(e)	#298 Local Indian Education, Inc.	\$	377,026.80
(f)	#316 Mariano Lake Community School	\$	114,984.20
(g)	#339 Mni Sose Intertribal Water Rights Coalition	\$	53,003.09
(h)	#512 Reservation Fire Protection District	\$	32,286.90
(i)	#659 United Crow Band, Inc.	\$	119,001.26
(j)	#664 United Villages, Inc.	\$	246,220.53
(k)	#686 Wingate Board of Education, Inc.	\$	1,171,180.22
	TOTAL:	\$	3,657,033.12

- (4) One of these organizations, #289 Lakota Oyate Wakanyeja Owicaki, has no successor and was authorized to contract under ISDA by a single Tribe, #422 Oglala Sioux Tribe. The Settlement Administrator will send a Claim Form to the Tribe on behalf of the defunct organization.
- (5) Class Counsel has proposed to the Court that it authorize dividing the share of #512 Reservation Fire Protection District (\$32,286.90) in equal shares among the ten Tribes that authorized that organization to contract under ISDA. *See* Docs. No. 1380, 1390, 1396. That motion is pending. The Court's decision on this motion will inform how Class Counsel and the Settlement Administrator proceed regarding the remaining no-longer-existing Class Members with known authorizing Tribes.
- (7) We have not yet identified the authorizing tribes for seven no-longer-existent Class Members, involving a total of \$258,295.18. Class Counsel have therefore instructed the Settlement Administrator to secure publication of targeted newspaper ads as set out on Exhibit E and to send a more detailed notice as set out on Exhibit F to each of the known federally recognized tribes in the relevant geographic areas. Those seven class members have shares as follows:

#20	American Indian Center of Central California (Auberry, CA)	\$	56,502.07
#59	Brownstone Woman Project		

	(Rapid City, SD)	\$	24,215.17
#392	Nebraska Indian Inter Tribal Development (Winnebago, NB)	\$	16,143.45
#411	Northern Nevada United Urban Indian Association (Sun Valley, Reno, Sparks, NV?)	\$	8,071.72
#449	Peace Pipe Indian Center (Bismarck, ND)	\$	16,143.45
#504	Rapid City Indian Health Board (Rapid City, SD)	\$	16,143.45
#571	Sioux City Indian Education Committee (Sioux City, IA)	\$	121,075.87
	TOTAL:	\$	258,295.18

PENDING MOTION REGARDING CLASS MEMBER 386

5. Class Counsel's motion at Doc. No. 1394 seeks the Court's approval to distribute funds identified for Class Member 386, the Native Village of Venetie. As explained in that motion, Class Counsel and Defendants determined that there are actually two separate Class Member "Venetie" entities, and that the Distribution Percentage for Class Member 386 mistakenly combined contract support cost data for both entities. The motion at Doc. No. 1394 is ripe for decision. *See* Doc. No. 1398 (Declaration of K. Jue indicating the Motion and exhibit had been transmitted to the two Tribes) *and* Doc. No. 1413 (Declaration of K. Jue indicating the Motion and exhibit previously transmitted had been received by the Tribes). Class Counsel respectfully request that the Court to enter the proposed Order lodged with this motion.

CONCLUSION

Class Counsel and the Settlement Administrator will continue to update the Court via periodic reports on the status of the distribution process, especially as regards the no-longer-existent entities, the unapproved Claim Forms, and the interpleaders.

Respectfully submitted,

s/ Michael P. Gross

MICHAEL P. GROSS

M.P.GROSS LAW FIRM, P.C.

460 St. Michaels Drive, Suite 401

Santa Fe, NM 87505

mike@mpgrosslaw.com

Counsel for Plaintiffs Ramah Navajo Chapter and
Oglala Sioux Tribe and Lead Class Counsel

s/ C. Bryant Rogers

C. BRYANT ROGERS

VanAMBERG, ROGERS, YEPA, ABEITA &
GOMEZ, LLP

P.O. Box 1447

Santa Fe, NM 87504-1447

cbrogers@nmlawgroup.com

Counsel for Plaintiffs Ramah Navajo Chapter and
Oglala Sioux Tribe and Co-Class Counsel

s/ Lloyd B. Miller

LLOYD B. MILLER

SONOSKY, CHAMBERS, SACHSE, MILLER,
MONKMAN & FLANNERY, LLP

900 West Fifth Ave, #700

Anchorage, AK 99501

lloyd@sonosky.net

Counsel for Pueblo of Zuni and Co-Class Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing 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/ C. Bryant Rogers
C. BRYANT ROGERS