

**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.

RYAN ZINKE, Secretary of the Interior, *et
al.*,

Defendants.

No. 90-cv-957-JAP/KBM

**CLASS COUNSEL'S SECOND REPORT TO THE COURT
ON THE DISTRIBUTION OF CLASS FUNDS**

COME NOW Class Counsel and hereby submit this Second Report to the Court pursuant to section VIII.D.4 of the Final Settlement Agreement ("FSA") (Doc. 1306-1).

**REPORT ON THE INITIAL DISTRIBUTION AND STATUS OF THE
DESIGNATED ACCOUNT**

1. The Court's Order of August 17, 2016 (Doc. 1362), authorized Class Counsel to secure distribution of \$862,261,991.62 to Class Members in the amounts shown on Exhibit B to the Class's Motion (Doc. 1362-2), less adjustments in actual payment amounts to some Class Members required by the Treasury offset provision of the settlement (FSA, § VIII.C.1), all as shown in Exhibit C to that Motion (Doc. 1362-3, filed under seal). A total of \$518,773.86 in Treasury offsets were involved, leaving \$861,750,877.37 to be distributed. *Id.*

2. As of March 31, 2018, \$861,220,274.97 has been distributed to Class Members, constituting all payments for the initial distribution as required by the Court's Order, Doc. 1362, except funds reserved:

a. for payment to Class Member 72, California Valley Miwok Tribe, at issue in the single remaining interpleader. The Court will have to determine which officials have authority to act for the undisputed tribal payee and receive the Tribe's share of \$322,259.60. Doc. 1366.

b. for payments to Class Member 18, Alturas Indian Rancheria (\$35,442.94) and Class Member 76, Cayuga Nation (\$113,004.15). The shares of these two Class Members were at issue in now-resolved interpleaders. However, neither had submitted Claim Forms as of March 31, 2018, pursuant to this Court's orders. Docs. 1597, 1603.

These outstanding payments total \$470,706.69. *See* Exhibit 1 (Declaration of Kenneth Jue, for the Settlement Administrator) (Jue Decl.) and Exhibit 2 (Declaration of Brian Deveau for the Class Monitor) (Deveau Decl.) hereto. The payments made include the shares of all no-longer-existing (defunct) Class Members allocated to authorizing tribes for those defunct entities, as approved by this Court's Orders at Docs. 1433, 1496, 1499, 1500, 1515, 1516, 1517, 1536, 1555, 1556, 1566, 1574, all as amended by Doc. 1577 (Nov. 13, 2017), and at Doc. 1602.

4. All Class funds required for distribution were initially deposited in the Class's "Designated Account" at Huntington National Bank ("Huntington"). Then, most of those funds were transferred to several other participating banks, all under the

umbrella of the “Designated Account” at Huntington as authorized by the Court’s May 4, 2016, Order (Doc. 1357). Some of those funds were from time to time held in a Federated Treasury Securities (“FTSF”) money market fund administered by Huntington National Bank as also authorized by that Order. The funds held in the banks and in the money market fund generated interest and dividends. All interest and dividend earnings that the Class was entitled to receive on the FDIC-covered bank deposits (calculated at the .25% guaranteed return) and all dividends earned on the FTSF money market account were deposited into the Reserve Account on an ongoing basis pursuant to that same Court Order and § VIII.C.4 of the FSA. There has, however, sometimes been a delay in transferring those earnings to the Reserve Account. *See*, Exhibits 1 and 2, *supra*.

5. After all the initial distributions (except those noted in paragraph 3, *supra*) were paid, \$470,706.69 remains in the Designated Account, exactly enough to make the payments noted in paragraph 3. *See* Exhibits 1, 2, *supra*.¹ This balance includes the \$15,485.69 transferred into the Designated Account per the Court’s Order at Doc. 1587.

THE REMAINING BALANCE IN THE RESERVE ACCOUNT

6. Section VIII.A.1 of the FSA initially established the Reserve Account in the amount of \$4,000,000.00. Treasury offsets subsequently reduced this amount to \$3,999,645.64, and this Court approved establishment of the Reserve Account in that amount. *See* Doc. 1362, at 2 (Aug. 17, 2016).

¹ A few issued checks had yet not cleared before the March 31, 2018, statements upon which this Report is based. When those checks clear in the normal course of business, they will not alter the numbers in those statements or in this Report. We will apprise the Court of the status of these checks when we file our anticipated motion for approval to carry out a second, final distribution. *See* paragraphs 15 and 16, *infra*.

7. As required by section VIII.C.1 of the FSA (and as noted in ¶ 4, *supra*), the Reserve Account has been augmented by interest and dividends accumulated on:

- (a) the funds held in the Reserve Account itself;
- (b) the Net Settlement Amount held in the Designated Account (including the funds held in the several participating banks); and
- (c) the attorneys' fees withheld pursuant to the Court's Order of August 17, 2016 (Doc. 1363), at 3 ¶ c.

Those interest and dividends have increased the Reserve Account by \$650,525.29, as of March 31, 2018. *See* Jue Decl. (Exh. 1) ¶ 3.a; Deveau Decl. (Exh. 2) ¶3.b.

8. The Reserve Account has also been augmented by the shares of four defunct Class Members for which the Class could find no successor entity or authorizing Tribe (*see* Docs. 1495, 1497, 1504, and 1523), adding \$64,573.79 to the Reserve Account as follows:

<u>Doc.</u>	<u>Class Member</u>	<u>Amount</u>
1495	#411 Northern Nevada United Urban Indian Association	\$ 8,071.72
1497	#449 Peace Pipe Indian Center	16,143.45
1504	#353 Native American Community Development Corp. of Omaha	16,143.45
1523	#59 Brown Stone Woman Project	24,215.17
<hr/>		
Total		\$64,573.79

See also Exhibit C to the Class Payments Motion, Doc. 1361-3 (filed under seal), approved by the Court at Doc. 1362 (Aug. 17, 2016).

9. The Reserve Account was also augmented by the shares of two Class Members that failed to file a Claim Form within the deadline set by the Court (*see* Doc. 1448 (April 4, 2017)). That added \$16,143.44 to the Reserve Account:

<u>Doc.</u>	<u>Class Member</u>	<u>Amount</u>
1448	#506 Red Devil Traditional Council	\$ 8,071.72
1448	#403 Noble Johnson-O'Malley	8,071.72
<hr/>		
Total		\$16,143.44

See Doc. 1522 (July 10, 2017), as amended by Doc. 1538 (Aug. 8, 2017).

10. The Reserve Account was reduced by \$5,101.72 to permit a full Class share payment to be made to Class Member #386T Native Village of Venetie. *See* Doc. 1442 (Mar. 28, 2017). (The Class discovered that a previously listed entity, Class Member #386 Native Village of Venetie, was in fact two entities, both of which were Members of the Class. The two Class Members are now designated as #386T Native Village of Venetie, and #386X Native Village of Venetie Tribal Government. The \$5,101.72 drawn from the Reserve Account was required to augment the share of #386T Native Village of Venetie and thereby assure that this entity received its full minimum payment for 1999 (when it otherwise would have received less than the \$8,000 minimum established as part of its Distribution Percentage defined in § II-T of the Final Settlement Agreement (FSA).) *See* Doc. 1394 ¶¶ 4-7 (Jan. 5, 2017).)

11. The Reserve Account has also been reduced (a) to cover Court-approved litigation and settlement implementation costs (*see* ¶ 12, *infra*); (b) to pay federal and state income taxes for CY 2016 of \$94,587.75 (Docs. 1583, 1584); and (c) for payments due for costs incurred by Tribes that participated in the sampling process and to the

Pueblo of Zuni for its class representative costs incurred prior to settlement (Doc. 1468). Some of those sampling costs were initially charged against the Class funds in the Designated Account, but that was corrected on January 5, 2018, to bring those cost charges into conformity with the Court's Order (Doc. 1468) directing that those costs be paid from the Reserve Account. *See* Exhibit 3.

12. To date, the Court has authorized cost reimbursements to Class Counsel in the following amounts all of which were paid from the Reserve Account:

Date	Order	Amount	Purpose
February 9, 2017	Doc. 1412	\$ 47,989.28	Litigation
March 7, 2017	Doc. 1426	364,491.90	Distribution
October 23, 2017	Doc. 1570	144,545.36	Distribution
January 24, 2018	Doc. 1588	66,143.30	Distribution
Total		\$623,169.84	

13. In late December 2017 Class Counsel discovered that the Class Monitor (Moss Adams, LLP) had inadvertently charged New Mexico gross receipts tax on its work for the Class when no such taxes were due. The Class Monitor promptly reimbursed Class Counsel for these tax charges when this was discovered. Class Counsel then deposited the \$9,407.63 balance due to the Class into the Reserve Account. This issue was addressed in more detail at ¶ 5 of Class Counsel's cost motion of January 22, 2018 (Doc. 1586).

14. To summarize the foregoing adjustments, the balance in the Reserve Account as of March 31, 2018, was \$3,984,032.51:

(a) Original Reserve Account balance after TOP deduction	\$3,999,645.64
--	----------------

(b)	Plus accumulated interest and dividends on all accounts (through March 31, 2018)	650,525.29
(c)	Plus shares of defunct Class Members with no successor or authorizing tribe	64,573.79
(d)	Plus shares of Class Members that did not meet deadline for filing Claim Forms	16,143.44
(e)	Less transfer from Reserve Account to Pay #386T Native Village of Venetie	(5,101.72)
(f)	Less reimbursed costs paid from Reserve Account	(623,169.84)
(g)	Less federal and state income tax payment (Docs. 1583, 1584) paid from the Reserve Account	(94,587.75)
(h)	Less cost paid from the Reserve Account for sampling tribes and the Pueblo of Zuni	(33,403.97)
(i)	Plus reimbursement of NMGRТ erroneously charged by Moss Adams, LLP	9,407.63
<hr/>		
	Balance in Reserve Account as of March 31, 2018 (<i>see</i> Exhibits 1 and 2)	\$3,984,032.51

15. As noted at ¶ 5, *supra*, as of March 31, 2018, there remains \$470,706.69 in the Designated Account to cover the payments described in paragraph 3, *supra*. Once the Miwok interpleader funds have been transferred to the Court's Registry and the remaining payments have cleared, the Designated Account can be closed. Class Counsel will shortly file a motion seeking leave of the Court to carry out these steps.

16. Class Counsel are preparing a motion for approval to carry out a second, final distribution of the funds held in the Reserve Account, retaining only funds to cover unreimbursed additional costs for the initial and second distributions, and for payment of the New Mexico gross receipts taxes authorized by Section IX.A of the Final Settlement Agreement, Doc. 1306-1, and this Court's February 19, 2016, Order, Doc. 1345. *See also*

Doc. 1344 (Feb. 18, 2016). Details regarding those costs and the amount of gross receipts taxes at issue will be covered in that motion, together with a table showing the proposed second distribution amount for each Class Member.

**THE REMAINING BALANCE IN THE ATTORNEYS' FEE
HOLDBACK ACCOUNT**

17. The \$1,000,000 held back by the Court from Class Counsel's attorneys' fees award is maintained in a third bank account at Huntington, as shown by Exhibit 4. All interest earnings on those funds have been transferred to the Reserve Account.

CONCLUSION

Class Counsel, the Settlement Administrator, and the Class Monitor stand ready to address any questions the Court may have respecting this report.

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, LLP
725 East Fireweed Lane, Suite 420
Anchorage, AK 99503
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