

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RAMAH NAVAJO CHAPTER,

Plaintiff,

vs.

CIV No. 90-0957 LH/WWD

BRUCE BABBITT, Secretary of the
Interior; **KEVIN GOVER**, Assistant
Secretary of the Indian Affairs; **ROBERT J.**
WILLIAMS, Acting Inspector General;
U.S. DEPARTMENT OF THE INTERIOR;
and **THE UNITED STATES OF AMERICA,**

Defendants.

CLASS DISTRIBUTION NOTICE NUMBER 1

With this notice, Class Counsel are commencing distribution of the partial settlement paid by Defendants on September 8, 1999. The Net Common Fund to be distributed as of September 8, 1999, was \$70,738,749.91, to be augmented by the remaining balance in the Reserve Account to which all interest accruals on the Net Common Fund and Reserve Account are deposited.

The proceeds of the partial settlement were deposited pursuant to Court Order in the Court Registry Investment System administered by the Clerk of the United States District Court for the Southern District of Texas (Houston). Since that time, the Class has engaged as the Independent CPA the Albuquerque firm of Rogoff Erickson Diamond & Walker, L.L.P. The purpose of this Notice is:

1. To publish a provisional list of Class Members believed to be eligible for an allocation from the net common fund.

2. To give notice to any tribe or tribal entity not on the provisional list of procedures it must follow in order to challenge its omission from the list.

3. To give notice to all Class Members of the requirement to submit a timely Claim Form with requested documents and to submit a Certificate of Lack of Documentation if the “Schedule of Federal Financial Assistance” from its single agency audit cannot be located for any settlement year.

4. To give notice and an opportunity to object to a conditional agreement reached by Class Counsel and a group of tribes or tribal entities which negotiate indirect cost rates with the Division of Cost Allocation of the Department of Health and Human Services (“DCA tribes”) instead of with the Office of Inspector General of the Department of the Interior (“OIG”).

5. To give notice and an opportunity to opt out of the Class with respect to additional claims added to the Plaintiffs’ complaint to enlarge the scope of damage claims for indirect cost shortfalls beyond those previously litigated in this action.

I. Who Will Qualify For A Share In The Settlement?

To qualify under the Partial Settlement Agreement (PSA) for a share in the current settlement, you must be an eligible Class Member, i.e.

A. Have had a P.L. 93-638 contract or compact or school grant in any or part of any settlement year (FY 1989 through FY 1993 or CY 1989 through CY 1993);

B. Have had an indirect cost rate with the Office of Inspector General (OIG) of the Department of the Interior or a lump sum agreement for contract support from BIA in any or part of any settlement year; and

C. Have received “other federal agency” funding as defined in the PSA in any or part of any settlement year.

D. Tribes and entities who negotiated indirect cost rates with the Division of Cost Allocation (DCA) of the Department of Health and Human Services will qualify for a share only if approved by the Court (see point III below).

II. Provisional List of Class Members And Procedure for Challenge

Attached to this notice is a list compiled by Class Counsel of tribes and tribal entities believed to be members of the Class which may be eligible for an allocation from the Net Common Fund. The list is also published on the Class web site www.rncclassaction.santafe.net and linked to the settlement web site www.RNCsettlement.com. The web site contains important pleadings, other documents, and notices previously sent to the Class as well as the complete Partial Settlement Agreement including Appendix D.

A. If You Are On The List But Wish To Be Removed

If for some reason you do not wish to share in this settlement, and believe you were incorrectly added to the provisional list, you may perfect a challenge by sworn affidavit delivered to Counsel for Plaintiffs and Counsel for Defendants within thirty (30) days of receipt of this Notice. Opposing counsel may dispute the challenge before the Magistrate, whose decision shall be final as to matters of fact but not of law.

B. If You Are Not On The List But Wish To Be Included

Any tribal entity which does not appear on the provisional list and which believes it is eligible to receive a share of the Net Common Fund must file a statement certifying under oath under penalty of perjury that (1) it had a Public Law 93-638 contract, self-governance compact or tribally controlled school grant with the BIA during any year of the fiscal or calendar years 1989

through 1993, and (2) had an OIG-approved indirect cost rate or a BIA approved lump sum agreement for indirect costs during any of the same years. The response must state that the said representations are true and correct to the best of the signatory's knowledge, information, and belief. The statement must also be accompanied by documentary proof (e.g., contract award documents, IDC rate agreements, independent audits, etc.) showing these elements for each year the entity claims to have had such contracts, compacts, or school grants and indirect cost rate agreements or lump sum agreements during the settlement period. The statements and proofs must be received no later than sixty (60) days after the date of publication of this Notice and shall also be served on Defendants' counsel within the same period. Challenges to inclusion or exclusions from the provisional list by other Class Members are not permitted.

Entities seeking to be added to the provisional list must send the attached Claim Form with supporting documentation within the deadline above to:

ROGOFF ERICKSON DIAMOND & WALKER, LLP
Ramah Navajo Chapter Class Action Settlement Administrator
6401 Jefferson NE
Post Office Box 93659
Albuquerque, New Mexico 87199-3656
1-888-726-9418

John W. Zavitz
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87103

C. Who Is Entitled To Share In The Allocations

Only Class Members who actually received “other-federal-agency” funds as that term is used in the Partial Settlement Agreement during one or more of the settlement years (fiscal or calendar years 1989 through 1993) are eligible for an allocation from the Net Common Fund. The allocations will be made on the basis of each Class Member’s level of “other-federal-agency” funding compared with that of the entire Class for each settlement year. The definition of “other-federal-agency” funds is set out at ¶3.a of the Partial Settlement Agreement which can be viewed on the Class website or the linked settlement website.

III. Need To Submit Timely Claim Form

TO SUBSTANTIATE ELIGIBILITY, EACH CLASS MEMBER MUST SUBMIT TO THE INDEPENDENT CPA SUFFICIENT FINANCIAL INFORMATION ABOUT ITS FEDERAL FUNDING FOR EACH OF THE SETTLEMENT YEARS.

THE PREFERRED INFORMATION IS YOUR “SCHEDULE OF FEDERAL FINANCIAL ASSISTANCE” FROM EACH YEAR’S SINGLE AGENCY AUDIT.

THE INDEPENDENT CPA WILL ALSO ACCEPT COPIES OF YOUR FINAL INDIRECT COST AGREEMENTS WITH ATTACHMENTS, OR INDIRECT COST RATE PROPOSALS, OTHER FEDERAL AGENCY CONTRACTS OR GRANTS, OR PROOF OF RECEIPT OF PAYMENTS FROM OTHER FEDERAL AGENCIES IN A FORM ACCEPTABLE TO THE INDEPENDENT CPA.

IF YOUR ENTITY CANNOT LOCATE ANY “SCHEDULE OF FEDERAL FINANCIAL ASSISTANCE” YOU MUST SEND IN THE ATTACHED “LACK OF DOCUMENTATION CERTIFICATION”. THE INDEPENDENT CPA MAY BE CONTACTED FOR MORE INFORMATION ABOUT THE DOCUMENTS NEEDED. IF CLASS MEMBERS CANNOT LOCATE THE DOCUMENTS, DEFENDANTS WILL PROVIDE COPIES OF THE SINGLE AGENCY AUDIT - SCHEDULE OF FEDERAL FINANCIAL ASSISTANCE OR OTHER DOCUMENTS, (E.G., INDIRECT COST AGREEMENTS OR PROPOSALS) PURSUANT TO PARAGRAPH 9(b) OF APPENDIX D TO THE PSA IF THOSE DOCUMENTS CAN BE LOCATED IN GOVERNMENT FILES. HOWEVER, EACH CLASS MEMBER IS THE BEST SOURCE FOR THE INFORMATION SOUGHT. IT IS THEREFORE INCUMBENT ON EACH CLASS MEMBER TO

MAKE THE BEST EFFORT POSSIBLE TO LOCATE THE DATA AND DOCUMENTS REQUIRED.

YOU MUST RETURN THE COMPLETED CLAIM FORM WITHIN SIXTY (60) DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE. AUDIT DATA RECEIVED FROM CLASS MEMBERS WILL BE KEPT CONFIDENTIAL PURSUANT TO PARAGRAPH 9(C) OF APPENDIX D. ENTITIES FOR WHOM THE REQUIRED DOCUMENTS ARE NOT RECEIVED MAY NOT RECEIVE AN ALLOCATION.

IF THE COURT, ON PETITION, LATER FINDS THAT THE METHODOLOGY FOR DISTRIBUTION BASED ON “OTHER FEDERAL AGENCY FUNDS” IS UNWORKABLE, TOO COSTLY, OR NOT BENEFICIAL TO THE INTERESTS OF THE CLASS, SOME OTHER METHOD MAY BE SUBSTITUTED AFTER NOTICE AND AN OPPORTUNITY FOR HEARING OBJECTIONS.

Following the expiration of the response periods set forth in this Notice, the Class Independent CPA will determine the Final List of Class Members who may be eligible for an allocation under the Partial Settlement Agreement.

Unless Class Members timely provide necessary documentation to the Settlement Administrator/Independent CPA they may not receive any share of the Net Common Fund attributable to the year or years for which there is insufficient data.

III. DCA Tribes

The Partial Settlement Agreement approved by the Court recertified the Class to include only those P.L. 93-638 contractors, compactors, or school grantees which had negotiated indirect cost rates during the settlement years with OIG or a lump sum agreement for contract support with BIA. Class Counsel submitted the agreement to the Court for review and approval, several DCA tribes approached Class Counsel to register their belief that they should be included in the Class for allocation purposes. This followed a settlement approved by the Court with one DCA tribe which had filed a timely objection to the settlement on this point. In order to facilitate

approval of the overall settlement, Class Counsel entered into a conditional agreement with these tribes as follows: After notice to the Class, hearing by the Court, and Court approval, DCA tribes will be eligible for individual allocations from the Reserve Account established in ¶7.d of the Partial Settlement Agreement up to a collective capped amount of \$900,000 based on the same criteria as apply to other Class Members. DCA tribes will not, however, become Class Members for any other purpose including eligibility for allocations from any future Class Common Fund in this case. The parties believe this arrangement will not impact the OIG tribes significantly in view of the fact that the Reserve Account of \$1,000,000 is to be supplemented under par. 7.e of the Partial Settlement Agreement by interest earned on the Net Common Fund. To date the interest earned for the two and one half months since receipt of the settlement proceeds has exceeded \$900,000.00. Class Counsel and the CPA have estimated the costs of distribution of the Net Common Fund to be approximately \$550,000.00. Thus, the full amount reasonably expected to be needed to pay for distribution plus the maximum capped allocations to the DCA tribes is already available or close to being available. Any remaining balance in the Reserve Account will be returned to the Net Common Fund for general distribution.

Any Class Member wishing to object to the conditional settlement agreement with DCA tribes may do so by filing a written objection stating its name, responsible officer, or attorney, address, telephone number, and reasons for objection with the Clerk of the District Court for the District of New Mexico 333 Lomas NW, Albuquerque, New Mexico 87102 in a pleading using the caption above within thirty (30) days of the date of publication of this Notice. In addition, any such objection must be served on Class Counsel and Defendants' counsel within the same time period. Service shall be directed as follows:

Michael P. Gross
Class Counsel
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505

John W. Zavitz
Assistant U.S. Attorney
Post Office Box 607
Albuquerque, New Mexico 87103

IV. Hearing

A hearing on objections to the proposed DCA settlement will be conducted by the Honorable C. LeRoy Hansen, U.S. District Judge, at the **U.S. Courthouse, 333 Lomas NW, Albuquerque, New Mexico on March 15, 2000, at 9:00 a.m.** Objectors must indicate in their written objections whether they intend to appear in person or through an attorney at the hearing. The date and time of the hearing may be changed without notice. Class Members are therefore advised to check with the Court prior to attending the hearing

V. New Claims

On September 30, 1999 (Docket #347), the Court approved motions for intervention and for amendment of the complaint to add an additional named Class representative and an additional claim for damages caused by shortfalls in payment of indirect costs. The new representative is the Oglala Sioux Tribe, which stated in its motion that it is, by information and belief, the only Class Member to have exhausted its administrative remedies for general shortfall claims back to FY 1992. The new claim asks for relief for shortfalls in indirect costs (contract support) based on BIA's failure to pay the amounts agreed in the annual indirect cost agreements with OIG. This claim augments the original claim litigated to date based on shortfalls created by incorrectly depressing indirect cost rates through improper inclusion of other federal agency funds in the direct cost base making up the indirect cost rate.

The new claim significantly expands the possible damages to which the Class will be eligible should it prevail. The new claim was among those reserved and not released in the Partial Settlement Agreement. The new claim involves the same legal issue as the remaining claim litigated to date. Any Class Member wishing to opt out of the Class (insofar only as the new claim is concerned) may do so by filing a statement with the clerk of the court within thirty (30) days of the date of publication of this Notice with service of upon Class Counsel and Defendants' Counsel within the same time period in the manner specified in part II above.

**ANY QUESTIONS REGARDING THE PLAN OF ALLOCATION
FOR THE PARTIAL SETTLEMENT AGREEMENT COMMON FUND
SHOULD BE DIRECTED TO:**

ROGOFF ERICKSON DIAMOND & WALKER, L.L.P.

Ramah Class Action Settlement CPA

Post Office Box 93659

Albuquerque, New Mexico 87199-3659

1-888-726-9418

website: www.rncsettlement.com

e-mail: rncsettlement@redw.com

**ANY OTHER QUESTIONS REGARDING THIS NOTICE
SHOULD BE DIRECTED TO CLASS COUNSEL BELOW.**

M.P. GROSS & ASSOCIATES, P.C.

By Michael P. Gross

Michael P. Gross

Class Counsel

460 St. Michael's Drive, #300

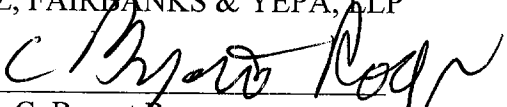
Santa Fe, New Mexico 87505

(505) 983-6686

(505) 989-1096 fax

e-mail: mpgross@santa-fe.net

ROTH, VanAMBERG, ROGERS,
ORTIZ, FAIRBANKS & YEPA, LLP

By 

C. Bryant Rogers
Co-Class Counsel
347 East Palace Avenue
Post Office Box 1447
Santa Fe, New Mexico 87504-1447
(505) 988-8979
(505) 983-7508 fax
e-mail: rogers@trail.com

APPROVED AS TO FORM:

Telephonically Approved 12/14/99
John W. Zavitz
Assistant United States Attorney
Defendant's Counsel

United States District Court
For the District of New Mexico

Ramah Navajo Chapter et al. v. Bruce Babbitt et al.
CIV No. 90-00957 LH/WWD

CLAIM FORM
(please type or print)

NOTE: THIS CLAIM FORM MUST BE POSTMARKED NO LATER THAN SIXTY (60) DAYS AFTER PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER.

PART I: CLASS MEMBER INFORMATION REQUIRED BY PARTIAL SETTLEMENT AGREEMENT, APPENDIX D, ART. III, 8.b.4

Name of federally recognized tribe or tribal organization

Contact person

Mailing address

City State Zip Code

Area Code Telephone Number

Area Code Fax Number

E-mail address

Taxpayer Identification Number

_____ Federally Recognized Tribe

_____ Tribal Organization

CLAIM FORM
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Name of federally recognized tribe or tribal organization

Attached in support of this claim are the following documents:

	FY1989	FY 1990	FY 1991	FY 1992	FY 1993
SCHEDULE OF FEDERAL FINANCIAL ASSISTANCE FOR SINGLE AGENCY AUDIT, OR					
INDIRECT COST AGREEMENT (FINAL), OR					
LUMP SUM AGREEMENT INDIRECT COST PROPOSAL, OR					
OTHER					

If your entity cannot locate its Schedule of Federal Assistance for a specific settlement year but believe it is qualified to receive an allocation, you must submit the attached "LACK OF DOCUMENTATION CERTIFICATION".

PART II: IF YOU ARE NOT ON THE PROVISIONAL LIST OF CLASS MEMBERS AND WISH TO BE INCLUDED, YOU MUST FILL OUT PART I ABOVE AND THIS PART II WITH SUPPORTING DOCUMENTATION AND SIGN UNDER PENALTY OF PERJURY:

The above entity, _____, was
 (name of federally recognized tribe or tribal organization)
 incorrectly omitted from the Provisions List of Class Members because (1) it had a Public Law 93-638 contract, self-governance compact or tribally controlled school grant with the BIA during any year of the fiscal or calendar years 1989 through 1993, and (2) had an OIG-approved indirect cost rate or a BIA approved lump sum agreement for indirect costs during any of the same years.. True and accurate copies of documents showing the entity's entitlement to be added to the list are attached.

**ACCURATE CLAIMS PROCESSING TAKES A
SIGNIFICANT AMOUNT OF TIME
THANK YOU FOR YOUR PATIENCE**

REMINDER CHECKLIST:

- Please sign the above declaration.
- Remember to attach requested documentation that applies to your situation.
- Please sign and notarize the LACK OF DOCUMENTATION for if you lack required documents for any of the settlement years.
- Keep a copy of your claim forms for your records.
- If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
- Please notify us of any change in telephone or address.

If you have any questions, please direct them to the Settlement Administrator:

**RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATOR
ROGOFF ERICKSON DIAMOND & WALKER, LLP
P. O. BOX 93659
ALBUQUERQUE, NM 87199-3659**

(888) 726-9418

TELEPHONE CONTACTS:

**SARAH LEE
SUSAN HANSEN**

E-MAIL: RNCSETTLEMENT@REDW.COM