

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

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

Plaintiffs,

vs.

No. CIV 90-0957 LH/KBM

DIRK KEMPTHORNE, Secretary of the
Interior, *et al.*,

Defendants.

ORDER APPROVING COSTS

THIS MATTER comes before the Court upon an Application of Class Counsel and Co-Class Counsel for an Award of Attorneys' Fees and Costs (Docket No. 1144)("the application"). The Court has already entered an order awarding attorneys' fees. Having considered the relevant application and supporting memorandum and exhibits, the arguments of counsel, the absence of any objections to the costs sought, the applicable law, and after having conducted a Fairness Hearing upon notice to all Class members, the Court finds that the cost portion of the Application of Class Counsel and Co-Class Counsel for an Award of Attorneys' Fees and Costs (Docket No. 1144) shall be **granted**.

Discussion

Class Counsel has submitted a detailed application for reimbursement of costs incurred in the course of representing the Class, in the pursuit of securing PSA III. They propose that these costs be paid from the balance of common funds created in PSA I and PSA II.

The Declaration of Class Counsel Michael P. Gross in Support of PSA III and Motion for Attorneys Fees (Ex. 3 to the application), states that Class Counsel seek reimbursement of costs to date in the amount of \$17,873, and that justification for this cost request is “contained in Plaintiffs’ memorandum and declarations of Co-Class Counsel Rogers and Co-Class Counsel for DCSC Miller accompanying the motion for fees and costs.” (Gross Decl. at ¶15). Exhibit 4 to Gross’s Declaration substantiates unreimbursed costs in the amount of \$6,528.47. Examination of the Declaration of Class Co-Counsel C. Bryant Rogers substantiates unreimbursed costs that his firm incurred in pursuing equitable relieve in the amount of “\$5,720.45, as shown by sub-Exhibit 7 to Exhibit J.” (Rogers Decl. at ¶68). The Declaration of Co-Counsel Miller substantiates unreimbursed costs in the amount of \$5,625.00. The combined costs amount to \$17,873.

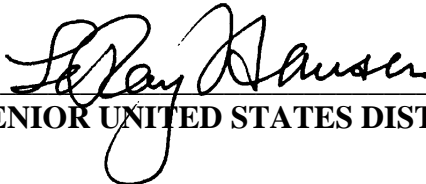
The Court concludes that these costs were reasonably and necessarily incurred and that the reimbursement of such costs, out of the Reserve Accounts, in addition to the award of attorneys fees, is reasonable, and shall be made at the time that payment of Counsel’s fee is made.

This order, granting costs that were requested by Plaintiffs prior to the Fairness Hearing, is entered with the understanding that some costs, although already incurred, have not yet been presented to the Court – most notably those costs incurred in providing Class notice of the Fairness Hearing, and remaining costs of the expert for the Class. It is the Court’s expectation that a subsequent motion for costs will be filed by the Plaintiffs. Such a motion will not suspend the time for appeal on the merits, as finalized in the Final Judgment that will be entered contemporaneously

with this order.¹ Because the costs issue is completely collateral to the merits, the filing of a notice of appeal does not deprive the district court of jurisdiction to tax costs.

WHEREFORE, the Court concludes that the application of Class Counsel for reimbursement of costs in the amount of \$17,873 is reasonable, is hereby awarded to Class Counsel, and shall be made, from the Reserve Accounts, at the time that payment of Counsel's fee of \$700,000 is made.

IT IS SO ORDERED.

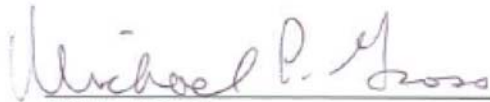


SENIOR UNITED STATES DISTRICT JUDGE

¹Reiterating the separate nature of the judgment on the merits and the determination of costs, Rule 58 states that “[o]rdinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees.” FED.R.CIV.P. 58(e).

Approved as to form

For Plaintiffs



Michael P. Gross
Lead Class Counsel



C. Bryant Rogers
Co-Class Counsel

Telephonically Approved 08/26/08

Lloyd B. Miller
Co-Class Counsel DCSC Claim

For Defendants

Telephonically Approved 08/26/08

James Todd
US Department of Justice