

IN THE 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 persons similarly situated,

Plaintiffs,

vs.

No. CIV 90-0957 LH/WWD ACE

GALE NORTON, Secretary of the
Interior, in her official capacity,
UNITED STATES DEPARTMENT OF
INTERIOR, NEIL McCALEB, Assistant
Secretary of Interior for Indian Affairs,
in his official capacity, EARL DEVANEY,
Inspector General, in his official capacity,
and UNITED STATES OF AMERICA,

Defendants.

**RULE 54(b) JUDGMENT
APPROVING SECOND PARTIAL SETTLEMENT**

THIS MATTER comes before the Court on the Joint Motion For Preliminary and Final Approval of Second Partial Settlement Agreement And For Order Authorizing Class Notice and the Application of Class Counsel for an Award of Attorneys' Fees and Costs. Having considered the relevant pleadings, the arguments of counsel, all filed objections, all other matters of record, and the applicable law, the Court finds that the Second Partial Settlement Agreement is in the best interests of the Class and is hereby approved, and that the Application of Class Counsel for an Award of Attorneys' Fees and Costs is well taken and is hereby granted.

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IT IS, THEREFORE, ORDERED that the Second Partial Settlement Agreement is approved and incorporated herein as the Judgment of the Court.

IT IS FURTHER ORDERED that Judgment Approving this Second Partial Settlement Agreement, under which the United States shall pay Plaintiffs TWENTY-NINE MILLION DOLLARS (\$29,000,000), plus post-judgment interest in accordance with law, and pursuant to which the claims specified in Section II.A of the Second Partial Settlement Agreement are to be dismissed with prejudice, is directed to be and hereby is **ENTERED**. The Settlement Amount shall be deposited by the Defendants in the Registry of the Court or other account under the control of the Clerk of the Court (hereinafter "the Registry") promptly after this judgment has become final and is no longer subject to further review by appeal or *writ of certiorari* as contemplated by Section III.B of the Second Partial Settlement Agreement.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter into a written agreement with Class Counsel to establish the separate accounts and to assist Class Counsel in the management of the distribution of the Settlement Amount as contemplated in the Second Partial Settlement Agreement. This agreement shall be approved by the Court and implemented by its order.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to ensure that all the funds that are deposited and all accounts which are established pursuant to the Second Partial Settlement Agreement be invested or collateralized in accordance with the standards applicable to funds awarded under P.L. 93-638, as set forth at Section 111 of P.L. 107-63.

IT IS FURTHER ORDERED that the Clerk of the Court is authorized to charge and deduct a Registry Fee, not to exceed two and one-half percent (2 ½ %) of the total amount of all

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interest earned on the invested funds contained in the Registry, pursuant to the policy of the Judicial Conference and the Administrative Office of the United States Courts. *See* ADMINISTRATIVE OFFICE OF THE U.S. COURTS, THE GUIDE TO JUDICIARY POLICIES AND PROCEDURES, vol. I, chap. VII, pt. J(6)(A), at 430-434 (1997).

IT IS FURTHER ORDERED that the parties shall proceed with the distribution of the Net Common Fund (as defined in Section VI.E. of the Second Partial Settlement Agreement) resulting from this Partial Judgment according to the terms of the Second Partial Settlement Agreement. Under no circumstances will funds be distributed from the Registry without an Order from the Court directing the Clerk or other custodian to disburse the funds as contemplated in Appendix F of the Second Partial Settlement Agreement.

IT IS FURTHER ORDERED that the “Settled Claims,” as defined in the Second Partial Settlement Agreement, are dismissed with prejudice.

IT IS FURTHER ORDERED that Class Counsel’s Application for Award of Fees and Costs is granted, and that Class Counsel are awarded \$_____ in attorney’s fees plus ____% of the post-judgment interest on the Settlement Amount, and New Mexico Gross Receipts Tax on those fees, all to be paid out of the Settlement Amount in accordance with the Second Partial Settlement Agreement.

IT IS FURTHER ORDERED that pursuant to the Second Partial Settlement Agreement, the attorneys’ fee award, including interest and tax, shall be paid by the Clerk of the Court to Class Counsel Michael P. Gross within ten days of the date on which this Order and Final Judgment becomes final and is not subject to further review by appeal or by writ of *certiorari* or within ten days after the date on which Defendants deposit the Settlement Amount with the Clerk of the Court, whichever is later.

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IT IS FURTHER ORDERED that Class Counsel is awarded \$_____ for costs, to be paid within ten days of the date on which this Order and Final Judgment becomes final and is not subject to further review by appeal or by writ of *certiorari* or within ten days after the date on which Defendants deposit the Settlement Amount with the Clerk of the Court, whichever is later.

IT IS FURTHER ORDERED that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no just reason for delay and, accordingly, expressly enters Final Judgment on the Settled Claims, on this approval of the Second Partial Settlement Agreement, and on Class Counsel's Application for Award of Fees and Costs.

IT IS FINALLY ORDERED that the Court expressly retains jurisdiction to enforce the Second Partial Settlement Agreement, and to hear and decide all pending claims, defenses, and issues reserved pursuant to Section II.B of the Second Partial Settlement Agreement.

IT IS SO ORDERED THIS ____ DAY OF _____ 2002.

UNITED STATES DISTRICT JUDGE