

**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.

CIV No. 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.

FILED
AT ALBUQUERQUE NM

MAR 27 2002

ROBERT M. MARCH
CLERK

CLASS NOTICE

THIS NOTICE CONTAINS IMPORTANT INFORMATION.

I. DISTRIBUTION OF RESERVE ACCOUNT

Tribes and organizations that received distributions from the First Partial Settlement in this action are, together with this Notice, receiving a check for that tribe's or organization's share of the residual distribution of the Reserve Account which has been held under the Court's control since deposit of the Government's first settlement.

On February 19, 2002, the Court ordered this distribution upon a stipulated motion of the parties. The total amount being distributed under this order is \$4,254,574.70. The distribution amounts have been calculated based on paragraphs 17, 18, and 19 of Appendix D to the Partial Settlement

Agreement approved May 14, 1999 (Docket No. 285, amended, Docket No. 287). The amount includes certain subcategories totaling \$155,303.54 for previous opt outs which negotiated supplemental settlements, and certain tribes whose cognizant agency is the Department of Health and Human Services. The distribution comports with the Court's order of August 13, 1999 (Docket No. 322) regarding proportional distribution of the interest earnings placed in the reserve account based on each sub-account's ratio of principal and income to the aggregate principal and interest in the reserve account.

An amount of \$750,000 (consisting of the residual from the original \$1,000,000 reserve account balance plus some retained interest earnings) has been withheld from this distribution (plus interest since the date of the Court's order) to provide for the costs of this residual distribution, a study to be commissioned by Class Counsel of the benchmarking system to be implemented for FY 2001 and FY 2002 by Order dated June 1, 2001 (Docket No. 557), and to reimburse costs for Class Counsel's continued activities in researching, evaluating, and monitoring the implementation of benchmarking and related matters such as carry forward adjustments.

Proceeds of this distribution may be used for any P.L. 93-638 purpose – past, present, or future. This distribution of settlement monies, as well as the previous one last February, should not be treated as adverse carry forward adjustments. See, Stipulated Order of January 16, 2001, Docket No. 502. For more information on these matters, contact the Class website or Class Counsel at the addresses, telephone numbers, or email addresses listed. The website address is:

www.rncsettlement.com

II. BENCHMARKING

On June 1, 2002 (Docket No.557), the Court entered a Stipulated Order directing the Office of Inspector General to implement a two-year trial reform of the method for calculating indirect costs for FY 2001 and FY 2002. The "benchmarking" trial, as we call it, deducts certain percentages of "other federal agency funds" from the direct cost base depending on the proportion of such funds to BIA programs in the base. The object is to adjust contractors' rates to reflect the true costs of running BIA programs, given that most other federal agencies do not pay add-on indirect costs (indirect contract support). It should be noted that the implementation of the order as it now reads will be performed after completion of the audits for FY 2001 and FY 2002. In this connection Class Counsel have begun investigating changes in the method for calculating carry forward adjustments recently adopted in the former Western Region of OIG. Consultative meetings with OIG, BIA and their counsel have begun on this subject. The NCAI Task Force on Contract Support is involved in this investigation.

III. STATUS OF SETTLEMENT NEGOTIATIONS

The parties are currently working together on the final stages of a second partial settlement which (if finalized) will be in the amount of \$29,000,000. This settlement will cover the remaining "lump sum years" portions of the BIA shortfall claim for FY 1992 and 1993 and a new direct contract support costs claim for FY 1993 and 1994 discussed in part IV below. If this second

settlement is concluded class members will be given an opportunity to file objections to this settlement before it becomes final. The “cap” years’ portion of the claims are the subject of cross-motions for summary judgment currently pending before the Court. “Lump sum years” refers to annual appropriations which contain no limitation or restriction as to expenditures within the broad subject matter of the appropriation. Starting in the mid 1990s Congress began inserting such restrictions called “caps” into the annual appropriations for Indian programs operated by the Interior Department. The Government maintains that these “caps” reduce the Government’s contractual liability to pay contract support costs, while the Plaintiffs maintain that the “caps” operate solely to regulate the manner and timing of the payment of the underlying contract price for contract support but do not reduce or extinguish the contract liability for the full amount. In advance of the pending second settlement regarding the lump sum years, the parties have agreed to certain procedural adjustments reflected in the next paragraph.

IV. PROCEDURAL ADJUSTMENTS AND NEW CLAIM

On March 27, 2002, the Court entered a Stipulated Order providing for intervention in the Ramah Navajo Chapter Class Action by the Pueblo of Zuni and amendment of the Ramah complaint to add a third claim. The new claim seeks damages for non-payment by the BIA of direct contract support costs (DCSC) from FY 1993 forward. Any class member which wishes to be excluded from this new claim may exclude itself by submitting a formal written request for exclusion to the Court. Alternatively, any member who does not request exclusion may, if the member desires, enter an appearance through counsel as to the DCSC claim. This right to intervene also applies to the BIA shortfall claim. A request for exclusion or intervention must be sent to the Clerk of Court, United States District Court for the District of New Mexico, 333 Lomas NW #270, Albuquerque, New Mexico 87102. The request for exclusion must be filed with the Court no later than May 10, 2002. A copy of the request must be sent to and received by all counsel listed below by this same date. A class member that files a timely request for exclusion from the DCSC claim will not be entitled to share in any proceeds which may be recovered through the pending settlement or otherwise in this action for the DCSC claim and shall not be bound by any orders or judgments in the case as to this claim. Class members who do not exclude themselves from the DCSC claim will be entitled to share in any settlement or other recovery for that claim and will be bound by all orders and judgments in the case as to that claim.

PLAINTIFFS’ COUNSEL

MICHAEL P. GROSS
Class Counsel
M. P. Gross & Associates, P.C.
460 St. Michael’s Drive, #300
Santa Fe, New Mexico 87505
(505) 983-6686

DEFENDANTS’ COUNSEL

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

DAVID C. IGLESIAS
United States Attorney

C. BRYANT ROGERS

Co-Class Counsel
Roth, VanAmberg, Rogers, Fairbanks,
Ortiz & Yepa, LLP
P. O. Box 1447
Santa Fe, New Mexico 87504
(505) 988-8979

LLOYD B. MILLER

Co-Class Counsel for the DCSC Claim

WILLIAM PERRY

DAVID C. MIELKE

Sonosky, Chambers, Sachse,
Endreson & Mielke
501 Tijeras Avenue NW, Suite 200
Albuquerque, New Mexico 87102
(505) 247-0147
(505) 843-6912 (fax)

JAN E. MITCHELL

Assistant United States Attorney

THOMAS MILLET

Assistant Branch Manager

KAREN K. RICHARDSON

Attorney, Civil Division
United States Department of Justice
901 E Street, NW, Room 1018
Washington, DC 20004
(202) 514-3374
(202) 616-8470 (fax)