

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

FILED
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,

02 APR -1 PM 4:00


CLERK-ALES JOUETROU

Plaintiff,

vs.

CIV No. 90-0957 LH/WWD

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**,

AFFIDAVIT OF MAILING

The undersigned Edward R. Street, being first duly sworn, hereby deposes and states:

1. I am a partner and principal of REDW, LLC, the Independent CPA in this case, and am responsible for the distribution of funds to Class members on behalf of REDW, LLC.

2. On April 1, 2002, I caused to be mailed, first class postage prepaid, to Eastern Shoshone Tribe, the following:

A. A check representing its portion of the reserve account as shown in Exhibit 1 to the Affidavit of Mailing filed on March 28, 2002 (Docket 637). The check for \$588.53, a copy of which is attached as Exhibit 1, was drawn on account No. 1352220320 at Wells Fargo Bank New Mexico. The \$588.53 amount due to the Eastern Shoshone Tribe is included in the total amount (\$4,254,574.70) to be distributed to each of the class members and DCA tribes as reflected in the Affidavit of Mailing filed March 28, 2002 together with Exhibits to that Affidavit. The \$588.53 check was held on March 28, 2002 pending receipt of a release form from the Eastern Shoshone

Tribe. That form has now been received, accordingly, the check is now being mailed to the Eastern Shoshone Tribe.

B. A Class Notice to tribes as shown in Exhibit 2 attached hereto and incorporated herein.

3. I further state that the check payable to the Eastern Shoshone Tribe was in the amount corresponding to the formula set forth in Appendix D, paragraphs 17, 18, and 19 to the Partial Settlement Agreement approved May 14, 1999 (Docket No. 285) and the Order of the Court entered February 19, 2002 (Docket No. 612).

FURTHER AFFIANT SAYETH NAUGHT.

Edward R. Street

Edward R. Street

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Duly sworn to and subscribed before me this 1st day of April 2002, by Edward R. Street.

Gwendelyn Joy Coleman
Notary Public

My Commission Expires:

3/18/03



OFFICIAL SEAL
Gwendelyn Joy Coleman
NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires 3/18/03

**RAMAH NAVAJO CHAPTER CLASS
ACTION SETTLEMENT FUND**

P.O. BOX 93659
ALBUQUERQUE, NM 87199-3659
1-888-726-9418

WELLS FARGO BANK
NEW MEXICO, N.A.
GRANTS, NM 87020
95-219-1070

1601
001601

DATE
03/11/2002

AMOUNT
*****588.53*

PAY *FIVE HUNDRED EIGHTY-EIGHT AND 53 / 100

TO THE ORDER OF
Eastern Shoshone Tribe

C/O John Schumacher
PO Box 748
Fort Washakie, WY 82514

Ramah Navajo Chapter Class Action
Partial Settlement Approved 05/14/1999

CHECK IS VOID AFTER NINETY (90) DAYS
TWO SIGNATURES REQUIRED

Edward R. Street

[Signature]

Kenton Kachler

KDIC

Security Features Included. Details on back.

⑈001601⑈ ⑆107002192⑆1352220320⑈

**RAMAH NAVAJO CHAPTER CLASS
ACTION SETTLEMENT FUND**

1601

02/19/2002	223-1991	Reserve Account Distribution	111.82	0.00	111.82
02/19/2002	223-1992	Reserve Account Distribution	135.36	0.00	135.36
02/19/2002	223-1993	Reserve Account Distribution	153.02	0.00	153.02
02/19/2002	223-1989	Reserve Account Distribution	88.28	0.00	88.28
02/19/2002	223-1990	Reserve Account Distribution	100.05	0.00	100.05

CHECK: 001601 03/11/2002 Eastern Shoshone Tribe 588.53

**RAMAH NAVAJO CHAPTER CLASS
ACTION SETTLEMENT FUND**

1601

02/19/2002	223-1991	Reserve Account Distribution	111.82	0.00	111.82
02/19/2002	223-1992	Reserve Account Distribution	135.36	0.00	135.36
02/19/2002	223-1993	Reserve Account Distribution	153.02	0.00	153.02
02/19/2002	223-1989	Reserve Account Distribution	88.28	0.00	88.28
02/19/2002	223-1990	Reserve Account Distribution	100.05	0.00	100.05

CHECK: 001601 03/11/2002 Eastern Shoshone Tribe 588.53

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RAMAH NAVAJO CHAPTER,
OGLALA SIOUX TRIBE, and
PUEBLO OF ZUNI, for themselves
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Plaintiffs,

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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

Exhibit 2

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.

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