

**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,

v.

No. CIV 90-0957 LH/KBM **ACE**

DIRK A. KEMPTHORNE, Secretary
of the United States Department of
Interior, et al.,

Defendants.

PARTIES' JOINT SUBMISSION ON REMAINING ISSUES

COME NOW all parties by and through their counsel of record, and respectfully submit pursuant to the Court's Order of August 31, 2006 (Dkt. 1042) the following list of issues "which remain in this matter that require the further attention of the Court prior to entry of a final judgment":

I. There remain issues of equitable relief to be resolved:

A. The Plaintiffs contend that Defendants remain obliged to change their indirect cost rate methodology (including such changes in Defendants' carry forward rate adjustment procedure as may be required) to bring that methodology into compliance with the mandate of *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455 (10th Cir. 1997) and the law of this case.

B. Defendants contend that several issues must be resolved to determine if plaintiffs are entitled to the relief they seek including, but not limited to:

1. Whether 25 U.S.C. §450j-3 (originally enacted in 1998) would, as a matter of law, preclude the Court from granting Plaintiffs the equitable relief they seek (modifications to the indirect cost rate methodology, including carry forward adjustments); and
2. Whether, given the Court's recent decision relating to the appropriations caps (Order dated August 31, 2006), a conflict exists between class members rendering inappropriate any class treatment of the plaintiffs' claim challenging NBC's indirect cost rate methodology; and
3. Whether an Order requiring changes to the current indirect cost rate methodology is inappropriate and unwarranted given defendants' contention that contracting tribes are already authorized under the Indian Self-Determination Act, 25 U.S.C. §450 *et seq.* ("ISDA") to elect an alternative multiple rate system that would allow

Plaintiffs to isolate and fully capture the costs incurred in running only BIA programs.

II. The Plaintiffs contend that the Court should enter a declaratory judgment that the ISDA requires the defendants to pay direct contract support costs to ISDA contractors, subject to the availability of appropriations. Defendants contend that because the Bureau of Indian Affairs has adopted a policy requiring the payment of direct contract support costs, there no longer exists a live controversy for the Court to resolve.

III. Plaintiffs intend to file a notice attaching contract disputes showing exhaustion of Contract Disputes Act remedies for the claims ruled upon in the Court's Order of August 31, 2006 (Docket 1042). Plaintiffs contend that the Court had jurisdiction over the claims ruled upon in that Order. Defendants reserve the right to respond to plaintiffs' notice and dispute the Court's jurisdiction if they deem such response necessary.

IV. After the equitable relief issues referenced at ¶¶I and II above have been resolved, the plaintiffs would request that the Court resolve how, when and to whom the remaining Reserve Accounts should be distributed after reimbursement of class counsels' costs incurred in pursuing equitable relief has occurred per the prior orders of the Court authorizing payment of such costs from these Reserve Accounts (Dockets 557, 678, 731 and 734).

V. Defendants believe that the questions presented in ¶¶ I and II above can be resolved fully through dispositive motions. Plaintiffs believe that the questions in ¶ I above can be resolved either through dispositive motions or trial and that ¶ II above can be resolved through dispositive motion alone. The parties believe that further settlement negotiations would be beneficial and propose the following schedule that would allow the parties to conduct settlement negotiations followed by the submission by plaintiffs of either a request for trial setting or a dispositive motion if the negotiations prove unsuccessful:

A. The parties propose to meet one or more times in the next several months for settlement discussions to determine if the remaining issues in the case can be narrowed or resolved.

B. In the event settlement discussions do not result in the resolution of all of the issues remaining in the case, plaintiffs propose to either file a request for trial or a dispositive motion seeking equitable relief setting out the factual and legal grounds for such relief. Plaintiffs propose to file that dispositive motion or request a trial setting on or before February 15, 2007.

C. Defendants propose to file a dispositive motion on all issues identified in ¶¶ I and II above on or before twenty days after

FOR THE GOVERNMENT

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Certificate of Service

I certify a true copy of the foregoing was served upon counsel of record this 23rd day of October, 2006 by electronic mail to:

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