

**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

**DIRK A. KEMPTHORNE, Secretary of the
Interior, in his official capacity, et al.,**

Defendants.

**JOINT MOTION FOR PRELIMINARY AND FINAL APPROVAL
OF THIRD PARTIAL SETTLEMENT AGREEMENT
AND FOR AN ORDER THAT NOTICE BE SENT TO THE CLASS**

Plaintiffs Ramah Navajo Chapter, Oglala Sioux Tribe, and Pueblo of Zuni, for themselves and on behalf of the class of Native American tribes and tribal organizations similarly situated, by and through their counsel Michael P. Gross (Class Counsel), C. Bryant Rogers (Co-Class Counsel), and Lloyd B. Miller (Co-Class Counsel for the Direct Contract Support Cost Claim), and Defendants, by and through their counsel Karen Richardson, Senior Counsel, Federal Programs Branch, Civil Division, U.S. Department of Justice, have reached agreement on terms to settle the claims for equitable relief in this class action. The parties seek the Court's preliminary approval of a third partial settlement agreement, an order that notice be sent to the Class, a setting for an evidentiary hearing to consider final approval of the agreement, and, following that hearing, final approval of the agreement. The terms of the agreement are set forth in the attached Third Partial Settlement Agreement ("PSA III").

A proposed form of notice to the Class is attached as Appendix F to PSA III and a proposed form of an Order granting preliminary approval of this Motion is attached to PSA III as Appendix E. With the Court's approval of PSA III and the plaintiffs' execution of the Release of claims set for as Appendix D, the parties agree that there will be no remaining claims in this case, subject only to the outcome of any future appeal by the plaintiffs of this Court's decision of August 31, 2006 (Dkt. No. 1042) to grant summary judgment to the defendants on the plaintiffs' claims for monetary relief.

PSA III does not contain a monetary settlement, the subject of the parties' first and second partial settlement agreements. Rather, PSA III addresses the methodology currently employed by the National Business Center ("NBC") and formerly by the Office of the Inspector General ("OIG") of the United States Department of Interior ("DOI") to establish indirect cost rates for tribal contractors operating Pub. L. 93-638 programs. The proposed PSA III also resolves all of Plaintiffs' equitable relief claims regarding direct contract support costs. The parties submit that the proposed PSA III is fair and falls within the range of settlements that are fair and reasonable. It has been achieved through extensive arms-length negotiations spanning a period of approximately nine years, with very intensive negotiations over the last two years. This included exploration of many different alternative ways of seeking resolution of the Plaintiffs' claims for equitable relief in accordance with the applicable law and the law of this case.

The parties have completed discovery sufficient to reach an informed and intelligent decision with respect to these equitable claims. Class Counsel are experienced in Indian claims and similar litigation and are able to adequately represent the Class' interests in settlement.

Under PSA III the Court would retain jurisdiction to enforce the judgment incorporating the settlement and dispose of the Reserve Accounts.

The settlement encompasses all claims for equitable relief in the Amended Complaint. It becomes effective when the Court's approval is no longer appealable.

FOR THE FOREGOING REASONS, the parties respectfully move that the Court:

1. Grant preliminary approval of the PSA III;
2. Set a date for the evidentiary hearing to consider final approval of the PSA III and Application for Attorney's Fees and Costs;
3. Issue an order that class counsel send notice to the class substantially in the form attached to the PSA III as Appendix F;
4. Following the evidentiary hearing, grant final approval of the third Partial Settlement Agreement; and
5. Such other and further relief as to the Court seems just and equitable.

Respectfully submitted,

s/Michael P. Gross
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2008, I filed the foregoing electronically through the CM/ECF system, which caused the following party or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Jan Elizabeth Mitchell, Esq.
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s/C. Bryant Rogers
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