

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

RAMAH NAVAJO CHAPTER, and
other similarly situated entities,

Plaintiffs,

vs.

No. CIV 90-0957 LH/WWD

BRUCE BABBITT, Secretary of the
Interior; **EDDIE BROWN**, Assistant
Secretary of the Interior; **MARVIN
PIERCE**, Chief of the Office of
Inspector General, U.S. Department
of the Interior; and **THE UNITED
STATES OF AMERICA**,

Defendants.

**ORDER AND PARTIAL FINAL JUDGMENT
UNDER RULE 54(b)**

THIS MATTER comes before the Court on the parties' Joint Motion for Preliminary and Final Approval of Partial Settlement Agreement and Order that Notice be Sent to the Class (Docket No. 195), filed August 31, 1998, and the Application of Class Counsel for an Award of Attorney's Fees and Costs (Docket No. 201), filed October 2, 1998. Having considered the relevant pleadings, arguments of counsel, all filed objections, and the applicable law, the Court finds, for the reasons set forth in the Memorandum Opinion filed contemporaneously with this Order and Partial Final Judgment, that the Partial Settlement Agreement is in the best interests of the Class and will be **approved**, and that the Application for Attorney's Fees is generally well taken and will be **granted in part and denied in part**.

IT IS, THEREFORE, ORDERED that the Parties' Joint Motion to Approve the Partial Settlement Agreement (Docket No. 195) is **granted**, and the Partial Settlement Agreement is **approved** and incorporated herein as the Judgment of the Court.

IT IS FURTHER ORDERED that Judgment is Entered in favor of both named Plaintiff Ramah Navajo Chapter and the Plaintiff Class against the Defendants in the sum of **SEVENTY-SIX MILLION, TWO HUNDRED THOUSAND DOLLARS (\$76,200,000)** and prejudgment interest in the amount of **THREE MILLION, SEVEN HUNDRED AND THREE THOUSAND FIVE HUNDRED AND TWENTY NINE DOLLARS (\$3,703,529)** for a total of **SEVENTY-NINE MILLION NINE HUNDRED AND THREE THOUSAND FIVE HUNDRED AND TWENTY-NINE DOLLARS (\$79,903,529)**, plus post judgment interest which shall accrue and be paid in accordance with the terms of the Partial Settlement Agreement. This award is to 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 not subject to further review by appeal or writ of *certiorari* as contemplated in paragraph 2(c) of the 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 award as contemplated in the 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 the accounts which are established pursuant to the Partial Settlement Agreement be collateralized in accordance with the collateral provisions of 31 C.F.R. 202 (formerly

Treasury Circular 176).

IT IS FURTHER ORDERED that the Clerk of the Court is authorized to charge and deduct a Registry Fee, not to exceed ten percent (10%) of the total amount of all interest income 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 payment and distribution of the Net Common Fund resulting from this Partial Judgment according to the terms of the 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 paragraph 16(b) of Appendix D of the Partial Settlement Agreement.

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

IT IS FURTHER ORDERED that Class Counsel's Application for Award of Fees and Costs is granted in part and denied in part and that Class Counsel is awarded **EIGHT MILLION, THREE HUNDRED AND THIRTY-EIGHT THOUSAND DOLLARS (\$8,338,000)** in attorneys' fees plus Eleven Percent (11%) of the Post-Judgment interest on Common Fund, and New Mexico Gross Receipts Tax on those fees, all to be paid out of the Common Fund in accordance with the terms of the Partial Settlement Agreement and the Memorandum Opinion entered contemporaneously with this Order and Partial Final Judgment.

IT IS FURTHER ORDERED that pursuant to the Partial Settlement Agreement one-half of the total attorney's 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 Judgment Amount with the Clerk of the Court, whichever is later.

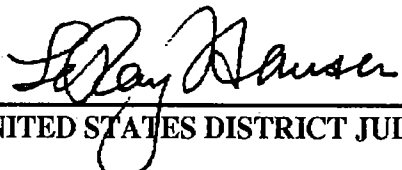
IT IS FURTHER ORDERED that the remaining balance of the total attorney's fee award, including interest and tax, shall be deducted from the Common Fund and deposited in a separate interest bearing account for the benefit of Class Counsel. After the distribution of the Net Common Fund to the Class, Class Counsel may apply to the Court for an Order distributing the remaining fee award. The Court shall retain jurisdiction over the distribution of these funds and will determine the appropriate time for the distribution of this half of the award, or portions of it, in accordance with the Memorandum Opinion contemporaneously filed with this Order and Partial Final Judgment. The Court will also retain jurisdiction to appoint alternate Class Counsel should they become incapacitated prior to the completion of their duties. The Court will retain the ability to award an appropriate portion of the remaining attorney's fees to any alternate counsel so appointed.

IT IS FURTHER ORDERED that Class Counsel is awarded ONE HUNDRED AND SEVENTY THOUSAND THIRTY SIX DOLLARS AND THIRTY-SEVEN CENTS (\$170,036.37) 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 Judgment 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 the Joint Motion to Approve 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 Partial Settlement Agreement, to hear and decide all pending claims, defenses, and issues not dismissed by this Partial Final Judgment, and to control the distribution of the second half the awarded attorney's fees.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE