

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

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.

SECOND PARTIAL SETTLEMENT AGREEMENT

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SECOND PARTIAL SETTLEMENT AGREEMENT

WHEREAS, on October 4, 1990, Plaintiff Ramah Navajo Chapter filed a class action, Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, under the Contract Disputes Act ("the CDA"), 41 U.S.C. Section 601, et seq., and the Indian Self Determination and Education Assistance Act ("the ISDEAA"), 25 U.S.C. Section 450m-1, in which the Plaintiffs raised allegations relating to the formula used by the Department of Interior to calculate indirect contract support costs for Indian tribes contracting under the ISDEAA. The claims relating to the indirect contract support cost formula as defined herein are referred to hereinafter as the "Calculation Claim," and

WHEREAS, in 1998, the parties in Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, entered into a partial settlement of claims arising out of Interior's use of this indirect contract support cost formula for years prior to 1994 (hereinafter "First Partial Settlement Agreement"), but reserved for further litigation other claims, including claims challenging the United States Department of Interior ("DOF") indirect contract support cost ("Indirect CSC") formula for years 1994 to the present, and

WHEREAS, the certified Ramah Class later moved to amend its complaint to include a new claim defined herein as the "Shortfall Claim," and the Oglala Sioux Tribe moved to intervene and raise the same shortfall claim on behalf of the Class for an additional time period, and

WHEREAS, notice was sent to the Class as to the inclusion of the "Shortfall Claim," and that Class members had the opportunity to opt out of the Class with respect to the "Shortfall Claim," and

WHEREAS, no Class member opted out of the Class with respect to the “Shortfall Claim” except for the Jackson Bank of Miwuk Indians, who filed an opt out notice with the Court on March 2, 2000 (Docket No. 404), but signed a release and disclaimer on August 30, 2002, of any right to this settlement and of any right to pursue an independent suit against defendants for the claims settled by this Second Partial Settlement Agreement, and

WHEREAS, on March 14, 2000, the plaintiff Pueblo of Zuni filed a separate putative class action, Pueblo of Zuni v. United States, No. CIV-00-0365 LH/WWD, raising what is defined herein as the “Direct CSC Claim” for FY 1993 and forward, and

WHEREAS, Defendants answered the plaintiff Zuni’s Complaint on May 30, 2000, but no class was certified in the case and no other substantive pleadings were filed, and

WHEREAS, the named plaintiff Ramah Navajo Chapter filed a motion to amend the complaint in the Ramah action to assert the same claim for FY 1994 and forward as that asserted by Plaintiff Zuni in Pueblo of Zuni v. United States, No. CIV-00-0365 LH/WWD (alleging that the Department of Interior was in violation of the ISDEEA for its alleged failure to pay direct contract support costs (“Direct CSC”) to tribes for fiscal years 1994 to the present), which motion was granted by Order of March 27, 2002 (Docket No. 634), and

WHEREAS, the Zuni action was voluntarily dismissed after its claims were consolidated into the Ramah action and the Pueblo of Zuni intervened in that action as class representative for the Direct CSC claim, with Ramah Navajo Chapter as co-class representative as to that claim, all pursuant to the Order of March 27, 2002 (Docket No. 633), and

WHEREAS, upon approval of the Court, notice was sent to the Class that the Zuni Action was being consolidated with the Ramah Action, that a new claim, the Direct CSC Claim, was

being added to the Ramah Action, and that Class members had the opportunity to opt out of the Class as to the new Direct CSC Claim, and

WHEREAS, no Class member opted out of the Class as to the new Direct CSC Claim, and

WHEREAS, the parties desire to avoid the expense, delay, and inconvenience of further litigation of several issues raised in this action.

NOW THEREFORE, in reliance upon the representations, mutual promises, covenants, and obligations set out in this Second Partial Settlement Agreement, and for good and valuable consideration also set out in this Second Partial Settlement Agreement, plaintiffs and defendants in the above-captioned action, by and through their respective counsel, hereby stipulate and agree as follows:

I. DEFINITIONS

The following terms, as they are used in this Second Partial Settlement Agreement, shall have the meanings defined below:

A. "Second Partial Settlement Agreement"

This document, which is entitled "Second Partial Settlement Agreement," contains the agreement reached by the parties, subject to approval of the Court after notice to the Class and a hearing on the proposed partial settlement. The Second Partial Settlement Agreement has been signed by counsel of record for plaintiffs and counsel of record for defendants, and incorporates the following appendices attached hereto:

Appendix A First Partial Settlement Agreement

Appendix B Release of Claims

- Appendix C [Proposed] Order Granting Preliminary Approval of Second Partial Settlement Agreement and Directing Notice to the Class
- Appendix D Notice Of Second Partial Class Settlement And Related Matters
- Appendix E [Proposed] Rule 54(b) Judgment Approving Second Partial Settlement
- Appendix F Allocation and Distribution Methodology To Second Partial Settlement Agreement
- Appendix G List of Class Members who participated in the DCSC survey

B. "First Partial Settlement Agreement"

The document entitled "Partial Settlement Agreement", but hereinafter referred to as "First Partial Settlement Agreement", was approved by this Court on May 25, 1999, and is incorporated herein as Appendix A.

C. Parties

1. "Plaintiff RNC"

Plaintiff Ramah Navajo Chapter (hereinafter "Plaintiff RNC") is the named representative in Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, as to the "Calculation Claim," as defined in Section I.G.1 below, and co-class representative as to the "Shortfall Claim" and the "Direct CSC claims" as defined in Sections I.G.2 and G.3 below.

2. "Plaintiff Oglala Sioux"

After the approval of the First Partial Settlement Agreement, the Oglala Sioux Tribe (hereinafter "Plaintiff Oglala Sioux") intervened as an additional class representative in Ramah Navajo Chapter v. Norton, No. CIV-90-0957 LH/WWD, as to the "Shortfall Claim," as defined

in Section I.G.2 below.

3. "Plaintiff Zuni"

Plaintiff Pueblo of Zuni (hereinafter "Plaintiff Zuni") is the named class representative on behalf of the "Direct CSC Claim," as defined in Section I.G.3 below.

4. "The Named Plaintiffs"

Plaintiff RNC, Plaintiff Oglala Sioux, and Plaintiff Zuni are "the Named Plaintiffs."

5. "The Class"

For purposes of this settlement only, "the Class" consists of the Named Plaintiffs and all Indian tribes and organizations who have contracted or compacted with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended ("the ISDEAA"), including the following tribes which opted-out of the Ramah Class but were permitted to re-enter the Class by Orders dated December 3, 1998 (Docket No. 247), December 8, 1998 (Docket No. 250), July 21, 1999 (Docket No. 300), August 1, 2000 (Docket No. 462), August 29, 2000 (Docket No.466), September 1, 2000 (Docket Nos. 467, 468), November 27, 2000 (Docket No. 487): Navajo Nation, White Mountain Apache Tribe, Eastern Shoshone Tribe, and Consolidated Tribes of Siletz Indians of Oregon.

6. "Defendants"

For purposes of this Second Partial Settlement Agreement, "Defendants" are as follows: The United States Department of Interior; Gail Norton, Secretary of the Interior, in her official capacity; Neil McCaleb, Assistant Secretary for Indian Affairs, in his official capacity; Earl Devaney, Inspector General, in his official capacity; and the United States of America but only with respect to contracts or compacts for Bureau of Indian Affairs ("BIA") programs entered into

by the Secretary of United States Department of Interior on behalf of the United States.

D. "Settlement Amount"

"Settlement Amount" is the lump sum payment amount as stated in Section III.A.

E. "Net Common Fund"

The "Net Common Fund" is the amount as stated in Section VI. E.

F. "Final Approval"

"Final Approval" is the date on which the court, after a hearing, enters an order, substantially in the form set forth hereto as Appendix E, approving this Second Partial Settlement Agreement.

G. Claims and Defenses

1. The "Calculation Claim"

The "Calculation Claim" refers to any claim for relief relating to the allegation that defendants applied an incorrect formula for calculating indirect cost rates and, as a result, failed to pay the proper amount of indirect CSC to the Class. The "Calculation Claim" is to be read as identical to the definition of "Plaintiffs' Cause of Action" set forth in Section 3. a. i. of the First Partial Settlement Agreement.

2. The "Shortfall Claim"

The "Shortfall Claim" refers to any claim for relief relating to the allegation that the defendants failed to pay the Class the amount generated by multiplying each Class member's indirect cost rate by the BIA's direct program base under OMB Cir. A-87.

3. The "Direct CSC" Claim

"The Direct CSC Claim" relates to any claim for relief relating to the allegation that

defendants failed to pay direct CSC.

H. "Class Counsel"

The term "Class Counsel" as used herein refers to Plaintiffs' Counsel listed in Sections A and B of Section XVII.

II. SETTLED AND RESERVED CLAIMS

A. Settled Claims

The parties agree that, except for those claims that are specifically set forth below in Section II.B, this Second Partial Settlement Agreement resolves and extinguishes any and all claims, demands, rights, causes of action and counts for money damages and/or specific monetary relief under any theory of recovery that were or could have been raised against the defendants as defined in Section I.C.6 above, by the Class as a whole in the Class Complaint, as amended, relating to contract support costs ("CSC") including, but not limited to, the Calculation Claim, and the Shortfall Claim and the Direct CSC Claim.

The parties further agree that this Second Partial Settlement Agreement also resolves and extinguishes any and all claims, demands, rights, causes of action and counts for money damages and/or specific monetary relief under any theory of recovery that any individual class member could have raised against the defendants as defined in Section I.C.6 above, relating to CSC, including, but not limited to, the Calculation Claim, and the Shortfall Claim and the Direct CSC Claim, except for those claims specifically set forth below in Section II.B.4 of this Second Partial Settlement Agreement.

Upon the payment of the Settlement Amount to the Clerk as set forth in Section III.A of this Second Partial Settlement Agreement, the Class, by and through their counsel, shall release

and discharge the Defendants from the Settled Claims by signing the Release of Claims attached hereto as Appendix B.

B. Reserved Claims

The following claims are not settled, dismissed or otherwise extinguished, and are expressly reserved:

1. Contract Support Claims for Certain Years.

The Calculation Claim for FY 1994 and thereafter; the Shortfall Claim for FY 1994 and thereafter; and the Direct CSC Claim for FY 1995 and thereafter;

2. Claims Against the Indian Health Service.

Any claim for money damages, monetary, equitable, or declaratory relief that has or may be brought under ISDEAA or the CDA with respect to contracts or compacts entered into by the Secretary of United States Department of Health and Human Services on behalf of the United States;

3. Causes of Action Arising After September 30, 1994 (after FY 1994).

Any cause of action arising after the end of September 30, 1994;

4. Individual Pending Claims.

Any pending claim by any individual Class member that was commenced prior to October 1, 1994, and is based on (1) an alleged computational error by the Department of the Interior's Office of the Inspector General ("OIG") in calculating a tribe's indirect cost rate; or (2) an alleged failure of BIA to pay an individual contract support obligation the specific amount of which has already been agreed upon in writing where such failure to pay is not based on an

agency-wide policy, practice, rule or regulation of the BIA or DOI or on Federal law; or (3) any claim or defense based on an audit exception, including a statement by the tribe's auditor that a certain expenditure is either contrary to law or not explained and, therefore, may lead to a bill for collection by BIA.

III. AMOUNT AND TIMING OF PAYMENT

A. Settlement Amount

In consideration of this Second Partial Settlement Agreement and the execution by the Class of the Release of Claims attached hereto as Appendix B, Defendants agree to promptly pay the Class a lump-sum amount of Twenty Nine Million Dollars (\$29,000,000.00) (the "Settlement Amount") (which includes principal and any pre-judgment interest, if applicable) in full, complete and final satisfaction of any and all claims, demands, rights, causes of actions and counts set forth in Section II.A of this Second Partial Settlement Agreement.

B. Timing of Payment of Settlement Amount

Defendants shall pay the Settlement Amount to the Clerk of the United States District Court for the District of New Mexico promptly after entry of the Rule 54(b) Judgment Approving Second Partial Settlement (Appendix E) and exhaustion of all rights of appeal therefrom. After payment to the Clerk, the Settlement Amount shall be deposited or invested as ordered by the Court pending distribution without requirement for further notice to the Class regarding the place or conditions of said deposit or investment, provided said deposits or investments conform to the standards applicable to the First Partial Settlement Agreement and are approved by the Court.

IV. PROCEDURES GOVERNING SETTLEMENT APPROVAL

The parties agree that this Second Partial Settlement Agreement shall be implemented in the following manner:

A. Request for Preliminary Approval and Permission to Send and Publish Notice to Class

Upon execution, the parties shall jointly and promptly file this Second Partial Settlement Agreement and request that the Court enter the Order Granting Preliminary Approval of Second Partial Settlement Agreement And Directing Notice to the Class, attached hereto as Appendix C.

B. Distribution of the Notice to Class Members

Promptly after entry of the Order Granting Preliminary Approval of Second Partial Settlement Agreement And Directing Notice to the Class, Class Counsel shall cause a notice, substantially in the form of the "Notice of Second Partial Class Settlement and Related Matters" ("Settlement Notice") attached as Appendix D, to be mailed to all federally-recognized tribes and to the known members of the Class by first-class mail; and shall promptly submit for publication at least once a copy of the Settlement Notice to either Indian Country Today or News From Indian Country, and to one other broad media or internet outlet reaching Indian country which may include the Ramah Class Settlement or Distribution website, WWW.RNCSETTLEMENT.COM.

For their part, Defendants agree to promptly publish the Settlement Notice in the Federal Register as soon as practicable.

C. Agreement To Bear Cost of Providing Notice

The Class agrees to bear the cost of providing notice to the Class except for those costs associated with the publication of the Settlement Notice in the Federal Register, which costs shall be born by Defendants.

D. Objections and Fairness Hearing

Any member of the Class who wishes to object to the terms of this Second Partial Settlement Agreement must file a written Notice of Objection with the Court specifying the objections and the basis for such objections as provided in the Settlement Notice, with copies served on Defendants' counsel and on Class counsel. In order to have an objection considered and heard at the Fairness Hearing, this written Notice of Objection must be filed with the Court and served on counsel by the date specified in paragraph 5 of the Settlement Notice as approved by this Court by its Order Granting Preliminary Approval Of Second Partial Settlement Agreement And Directing Notice to the Class, attached hereto as Appendix C.

Any Class member who has filed a timely written Notice of Objection may appear and be heard at the Fairness Hearing and show cause why the settlement and compromise in the Second Partial Settlement Agreement should not be approved. Objections to be considered at the hearing will be limited to those matters addressed in timely written Notices of Objection.

Judicial approval will not make this agreement, either explicitly or through incorporation by reference, an order of the Court. However, this provision shall not be construed to limit the Court's power to enforce the terms of this Second Partial Settlement Agreement as provided herein.

At the Fairness Hearing, the parties will request the Court's approval of this Second Partial Settlement Agreement and will present such evidence and/or arguments as may be appropriate to that end. Class Counsel and Defendants shall also be heard on Class Counsel's application for attorneys' fees and costs.

V. EFFECTIVE DATE

The effective date of this Second Partial Settlement Agreement shall be the date that the Court enters an order granting final approval of this Second Partial Settlement Agreement in substantially the form attached as Exhibit E ("Final Approval Order").

In the event of an appeal from said Order by a Class member, implementation of the Second Partial Settlement Agreement shall be stayed, including payment of the Settlement Amount, in whole or in part, pending final determination of any and all such appeals.

VI. DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ESTABLISHMENT OF SUB-ACCOUNTS

A. Deductions from the Settlement Amount

From the Settlement Amount, the following amounts shall be deducted and paid as follows:

1. Five Hundred Thousand Dollars (\$500,000.00) for the Reserve Account as defined and provided for in Section VI.B;
2. One Hundred Fifty Thousand Dollars (\$150,000.00) for the NCAI Account as defined and provided in Section VI.D;

