

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
No. CIV 90-0957 LH/KBM

**RAMAH NAVAJO CHAPTER,
OGLALA SIOUX TRIBE, and
PUEBLO OF ZUNI, for themselves** vs. **DIRK KEMPTHORNE, Secretary**
and on behalf of a class of persons
similarly situated, Plaintiffs

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

**SUMMARY NOTICE OF THIRD SETTLEMENT
TO ALL MEMBERS OF THE RAMAH CLASS**

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION AS TO A PROPOSED THIRD PARTIAL SETTLEMENT AGREEMENT
(PSA III). THE COMPLETE AGREEMENT CAN BE FOUND AT
WWW.RNCSETTLEMENT.COM OR A COPY OBTAINED FROM CLASS COUNSEL.**

This notice is given pursuant to the Order of the Court. Its purpose is to inform you of a proposed settlement of claims for equitable (injunctive or declaratory) relief relating to the manner in which indirect cost rates – rates that are used in establishing the amounts of indirect contract support costs under the Indian Self-Determination Act (“ISDA”) – are prepared.

You have the right to object to the settlement, but there is no right to opt out. To object to this settlement you must file in Court and serve on Class Counsel and defendants’ counsel a written statement of your objection within thirty (30) days of the date the notice was mailed to class members. Each objection must include the style of this case (above), the name and signature of the Class Member’s responsible official, and a concise statement of the grounds of objection, including grounds, if any, for objecting to the application for attorneys fees and costs.

A hearing to consider the fairness of the settlement and objections, including the application for attorneys fees and costs, will be held on Tuesday, August 26, 2008 at 10 o’clock a.m. before the Honorable Senior District Judge L. LeRoy Hansen in the Sixth Floor Courtroom at the United States Courthouse, 421 Gold Avenue, SW, Albuquerque, New Mexico 87102. Especially for those traveling long distances, you are cautioned to check this information beforehand with Class Counsel, as no notice of a change in date, time, or place will be sent to class members or published in the media.

DO NOT CONTACT THE COURT OR THE CLERK’S OFFICE.

Only timely objections to the settlement or application for fees will be heard by the Court.

Background

This is the third in a series of class settlements in this nineteen-year-old class action. This suit challenges the Bureau of Indian Affairs’ failure to pay full contract support costs under the ISDA and the methodology used by the Department of Interior (DOI) to calculate indirect cost rates for tribal contractors with ISDA contracts.

The case began in 1989 when Ramah Navajo Chapter sued claiming that the DOI improperly diluted indirect cost rates by including the programs of agencies that do not pay contract support costs in the base, an inclusion which resulted in lower rates and consequently lower indirect cost recoveries. In 1997 the Tenth Circuit Court of Appeals upheld the Class’ claim and remanded the case. In 1998, the parties reached the first settlement (PSA I) in the amount of approximately \$80,000,000. PSA I covered only “lump sum years.” Lump sum years are years prior to 1994 when the BIA’s annual appropriation was not capped at a specific amount for payment of contract support costs. PSA I reserved for future litigation all claims for years 1994 forward when Congress began capping the appropriation for contract support costs.

Thereafter, the Oglala Sioux Tribe intervened in the action to raise a claim called the “shortfall claim” alleging that even the amount of indirect costs for each class member computed under the existing allegedly flawed rate-making system was not paid in full. The Pueblo of Zuni also intervened to raise a claim premised on the BIA’s failure to pay direct contract support costs. In 2002, the parties reached a second partial settlement (PSA II) in the amount of \$29,000,000 for the lump sum years pertaining to these two new claims for years prior to the enactment by Congress of appropriations caps on the payment of contract support costs.

In August 2006, the District Court of New Mexico ruled in favor of the Defendants in this case as to their liability for unpaid contract support costs during years in which Congress capped the appropriation for contract support costs. That ruling will be appealed by the Class. Notwithstanding the ruling by the District Court in favor of Defendants on the monetary claims, the parties have engaged in extensive settlement negotiations on the non-monetary claims still existing in this case, resulting in this third settlement (PSA III).

I. Summary of Key Terms of the Proposed Settlement

The settlement achieves three broad Class goals:

1. It provides simplified options for removing non-paying agencies from the indirect cost rate base by allowing tribes to have a separate rate for any non-paying agencies, thus meeting the mandate of the Tenth Circuit on remand. These new options for tribal contractors to negotiate “special rates” do not require the creation of separate administrations for the programs included under each special rate;
2. It reforms carryforward procedures used in determining “fixed-with-carry-forward” rates; and
3. It recognizes the adoption by the Bureau of Indian Affairs (as a result of this Class action) of a new contract support cost policy that includes direct contract support costs, as an additional component of contract support costs, alongside indirect contract support costs.

Additionally, the settlement provides intensive training for tribal finance officers, accountants, and tribal officials in the use of the new procedures and their effects. For a detailed explanation of the settlement, Class Members are advised to read the settlement agreement on line at www.RNCSettlement.com.

II. The Principal Benefits and Features of the Settlement

The settlement provides:

1. Simplified special rate options which will enable Class members to avoid the dilution of indirect cost rates applied to ISDA contracts allegedly caused by the requirement to include all programs of all agencies in the direct cost base, including those which do not pay all, or in some cases, any, indirect costs.
2. Preserves each Class Member’s right to choose or not to choose special rate options created under this settlement or retain a single rate.
3. Reforms carryforward procedures in several ways by:
 - A. Allowing rate holders to report as “recovered” or “collected” only those ISDA funds actually paid by ISDA funding agencies for indirect costs, and not ISDA program or tribal monies diverted by tribal contractors to pay indirect costs because of shortages in appropriations.
 - B. Reducing the instances where only over-recoveries but not under-recoveries are carried forward by eliminating the carryforward of any over-payments of indirect contract support costs that are not due to over-estimates of indirect contract support cost need so that Class Member’s rates will not be adjusted downward in those circumstances.
 - C. Preserving Class Members’ rights to use remedies under the Contract Disputes Act, the ISDA, or other applicable law, for any individual claims not settled in this action (e.g., contract claims and claims based on under-payments of indirect costs due to agency error). The ISDA agencies will retain their corresponding right to issue bills of collection for erroneous over-payments and recoveries by those agencies because those over-payments will also not be included in carry forward calculations.
4. Provides a series of training sessions by the National Business Center and Class Counsel and Class Experts on the use of the new rate options and procedures and creates materials to explain the same through discs and CDs.

5. Reserves all Class and individual claims to money damages not settled in the First Partial Settlement (PSA I) and the Second Partial Settlement (PSA II) based on the government's past actions. These reserved claims relate to unsettled cap year claims.

6. Reserves all claims for monetary relief, money damages, and equitable relief against the Indian Health Service for under-payment of indirect contract support costs; except that, if the DHHS and IHS or any other agency accept and apply the new rates negotiated under this settlement by the Department of the Interior's National Business Center, no claim may be made for greater monetary relief or money damages than would, after the implementation of the new rate system, be produced under it. This same condition applies to the DOI and BIA.

7. The settlement recognizes the lawsuit's critical role in the adoption by the Bureau of Indian Affairs of a contract support cost policy acknowledging contractors' and compactors' right to Direct Contract Support Costs and requires extensive consultation with Class Members if the Department of the Interior or Bureau of Indian Affairs seeks to amend or rescind the policy.

III. Training Sessions

Defendants will underwrite their own costs (up to \$50,000) for preparing training materials and of NBC personnel to conduct a minimum of two training sessions, with a third session to be conducted provided funds are available. Although the Class agrees to underwrite the costs of training up to a maximum of \$100,000, the Class' expected share of training costs to be covered from the Reserve Accounts is \$50,000. The guarantee of an additional \$50,000 is for the purposes of ensuring that a third training session will take place, if possible.

IV. Attorneys' Fees and Costs

There is now approximately \$909,000 in uncommitted reserve accounts and the Class' Wells Fargo account available for remaining fees and costs. Class Counsel have applied for attorneys' fees to obtain this settlement in the sum of \$725,000. Of this amount \$700,000 would be paid upon the Court's approval together with New Mexico Gross Receipts Tax at 7.9375% (to the extent applicable). Counsel have also asked for reimbursement of outstanding unreimbursed costs to obtain this settlement in the amount of \$17,873. The remaining \$25,000 plus applicable NM GRT and costs incurred in the interim would be paid upon approval of a supplemental application after all costs of this settlement have been paid as detailed in PSA III. The Court has the discretion to award fees and costs to the attorneys. Any such award will be paid from the reserve accounts and the Wells Fargo account. The balances in the reserve accounts and Wells Fargo account will be used to fund the Class' share of the cost of training and development of materials. Any residual funds will be subject to distribution at the Court's discretion. A copy of the attorney's application can be viewed on the Class website at www.mncsettlement.com.

The contemplated costs of PSA III and the training component will leave a contingency or reserve balance of approximately \$15,000. All such remaining funds shall be subject to such final disposition as shall be approved by the Court.

NOTE: In any conflict between this Summary Notice and the Settlement Agreement, the Settlement Agreement shall control.

Counsel to whom objections must be sent are:

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Dated: May 21, 2008

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO