

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 others similarly situated,

Plaintiffs

v.

SALLY JEWELL, Secretary of the
Interior, *et al.*,

Defendants.

No. 90-cv-957-JAP/KBM

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF FINAL SETTLEMENT AGREEMENT; FOR ORDER DIRECTING
NOTICE TO BE SENT TO THE CLASS; SETTING FAIRNESS HEARING**

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(e), the parties jointly move this Court for an Order: (i) granting preliminary approval of the settlement agreement negotiated by the parties and attached as Exhibit A; (ii) directing notice be issued to the class in the form attached as Exhibit B; and (iii) setting a fairness hearing approximately four months after this Court issues an order granting preliminary approval of this settlement. In support of this Motion, the parties state as follows.

II. BACKGROUND

1. In 1990, the Ramah Navajo Chapter brought suit against the Government in this Court claiming that the Department of the Interior (“DOI”) improperly calculated indirect cost rates for Tribes and tribal contractors entering contracts or self-governance agreements

(collectively known hereafter as “contracts”) with the Bureau of Indian Affairs (“BIA”) to take over operation of certain BIA programs, services, functions, or activities pursuant to the Indian Self Determination Act of 1975 (“ISDA”), Pub. L. No. 93-638, *as amended*, 25 U.S.C. § 450 *et seq.* On October 1, 1993, this Court certified a class of all Tribes and tribal contractors that have BIA ISDA contracts or compacts, *see* Order, Doc. No. 96, and Class Counsel mailed a notice to all Class Members on March 21, 1994. *See* Notice of Class Action, Doc. No. 124. On September 8, 1998, this Court granted preliminary approval of the parties’ First Partial Settlement Agreement (“PSA-I”), and directed that notice of PSA-I be sent to the Class. *See* Order, Doc. No. 197. On May 14, 1999, this Court granted final approval to PSA-I to resolve plaintiffs’ “rate claim” for fiscal years 1989–1993, and the government agreed to pay \$76,200,000 to approximately 320 Tribes and tribal contractors. *See Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091 (D.N.M. 1999), Doc. No. 285.

2. On September 30, 1999, this Court granted plaintiff Ramah Navajo Chapter’s motion to amend its complaint to add a “shortfall claim,” alleging that the BIA had otherwise failed to pay tribal contractors their full amount of indirect costs, and granted the Oglala Sioux Tribe’s motion to intervene to also assert the shortfall claim. *See* Order, ECF No. 347. That Order also directed that notice of plaintiff’s shortfall claim be sent to the class. *See id.*

3. On March 27, 2002, this Court: (i) granted the Pueblo of Zuni’s motion to intervene to assert a shortfall claim and a “direct contract support cost claim” (“DCSC claim”) alleging that the BIA failed to pay tribal contractors their direct contract support costs; (ii) granted plaintiff Ramah Navajo Chapter’s motion to amend its complaint to assert the DCSC claim; and (iii) directed that notice be sent to the Class regarding the addition of this new claim. *See* Stip. Orders, ECF Nos. 633-634.

4. On September 9, 2002, this Court granted preliminary approval of the parties' Second Partial Settlement Agreement ("PSA-II") and directed that notice of PSA-II be sent to the Class. Order, ECF No. 679. On December 6, 2002, this Court granted final approval of PSA-II to resolve plaintiffs' shortfall claims for fiscal years 1989–1993 and direct contract support cost claims for fiscal years 1989–1994, and the government agreed to pay \$29,000,000 to approximately 224 Class Members. *See Ramah Navajo Chapter v. Norton*, 250 F. Supp. 2d 1303 (D.N.M. 2002), ECF No. 733. The Court reserved for further litigation any monetary claims for fiscal years 1994 forward for indirect contract support cost claims, any monetary claims for fiscal years 1995 forward for DCSC, and all claims for equitable relief. *See id.*

5. On May 21, 2008, this Court granted preliminary approval of the parties' Third Partial Settlement Agreement ("PSA-III"), and directed notice of PSA-III be sent to the Class. Order, ECF No. 1139. On August 27, 2008, this Court granted final approval to PSA-III, which reformed the indirect cost rate system for tribal contractors operating ISDA programs. *See* Order, ECF No. 1138.

6. On June 18, 2012, the Supreme Court ruled that the plaintiffs' claims were not barred by the government's appropriations law defense. *See Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012). Although the Supreme Court upheld the plaintiffs' right to full payment of contract support costs, the amount of those unpaid costs was contested for those years that had not yet been determined. Since July 2012, the parties have engaged in intensive arms-length bargaining. The parties have met in person at least 24 times, engaged in dozens of phone calls, and exchanged hundreds of emails and spreadsheets. The parties each retained auditing and statistical experts to assist them with valuing plaintiffs' claims in the course of these negotiations.

7. Class Counsel are experienced in litigation and, particularly, in prosecuting claims under the Indian Self-Determination and Education Assistance Act, as well as other Indian tribal claims, and have adequately represented the Class's interests in negotiating this settlement.

8. The named Class representatives also participated in the settlement negotiations. Representatives of the Named Plaintiffs were present during almost all in-person negotiations with the Government, and were regularly consulted throughout the negotiation period. They frequently consulted in private with Class Counsel by telephone, email, and in person. Each has advanced its own expenses, including those for transportation and accommodations.

9. The protracted and intensive settlement negotiations showed that the parties are far apart on many factual, legal and accounting issues materially affecting the calculation of the total amount of unpaid contract support costs from FY 1994 through FY 2013, and the resulting damages. If the case were not settled, the resolution of these issues would likely require litigation lasting many more years. Final negotiations were assisted by the active participation of U.S. Magistrate Judge Karen B. Molzen.

10. The parties have agreed upon the Final Settlement Agreement ("FSA") that is the subject of this motion.

III. KEY TERMS OF THE FINAL SETTLEMENT AGREEMENT

The FSA negotiated by the parties contains the following terms:

1. After the judgment becomes final and non-appealable, the Government will pay the Class a Settlement Amount of Nine Hundred Forty Million Dollars (\$940,000,000), plus post-judgment interest from the date of this Court's entry of final judgment, less the share of any Class Member that this Court may allow to opt out of this Settlement. Payment of the Settlement Amount will release the Government from all claims for underpayment of contract supports costs for fiscal year 1994 through fiscal year 2013, except for certain claims of

individual tribal contractors preserved in the Agreement. Payment of the Settlement Amount is the Government's sole obligation under this Agreement. If, however, this Court were to permit 15 or more Class Members to opt out of the Class, and their share of the settlement were to exceed fifteen percent (15%) of the Settlement Amount, the Government would have the right to declare the FSA null and void.

2. Any Class Member may object to the FSA or request other relief by complying with the procedures and deadlines set forth in the Class Notice to be sent to Class Members upon approval by this Court. Any ruling of this Court pertaining to the FSA may be appealed as provided by law.

3. The Agreement provides for the Settlement Amount to be divided into: (i) the Net Settlement Amount to be distributed to Class Members; (ii) a Reserve Account to be used to pay for the cost of administering this settlement; and (iii) an amount for attorneys' fees and costs incurred in securing this FSA and recovering the Settlement Amount for the benefit of the Class and for supervising the distribution of the Net Settlement Amount.

4. The parties agreed that the speediest, least expensive, fairest, and most accurate method for distributing the Net Settlement Amount to each eligible Class Member is to use the statistical and accounting analyses which helped the parties negotiate the settlement amount. Those analyses disclosed that the amount of contract support costs paid to each Class Member closely correlates with its unpaid contract support costs. Using that correlation, each eligible Class Member's share will be determined by a ratio between (a) the amount of contract support costs that allegedly should have been paid as determined by the parties' negotiations based on the data collected from the sample of Class Members, and (b) the contract support costs paid to each Class Member during the settlement years. Each Class Member with a BIA ISDA contract

or compact in a given year will receive a minimum of approximately \$8,000 for that year. The shares of the named Class Representatives will be enhanced by twenty percent (20%) in recognition of their contributions in achieving this settlement. The methodology used for distributing the Net Settlement Amount to each eligible Class Member and information on the sampling process is more fully explained in Appendix 2 of the attached FSA.

5. The FSA provides that, to be eligible for a share of the Net Settlement Amount, a Class Member must have entered into a Title I contract or Title III or Title IV compact or agreement under the ISDA with the BIA under the ISDA during any of the years FY 1994 through FY 2013 and must file a claim on a form to be provided by the Settlement Administrator, substantially conforming to that set out in Appendix 3. Each form sent to a Class Member will set forth the amount of money that the Class Member is entitled to receive from the Net Settlement Amount. Each Class Member's share of the Net Settlement Amount will be determined according to the methodology and distribution percentages set forth in the Distribution Appendix that is attached to the FSA. The Agreement further provides that, if by the end of the Claims Period, any Class Member has not timely submitted a claim form through the Settlement Administrator, or has disclaimed in writing its share of the Net Settlement Amount pursuant to the distribution percentages set forth in the Distribution Appendix, that Class Member's share of the Net Settlement Amount shall be reallocated to all other Class Members that have timely submitted claims in proportion to each such Class Member's share of the total Net Settlement Amount; provided, however, that unclaimed (but not disclaimed) amounts exceeding in the aggregate ten million dollars \$10,000,000 will be repaid to the United States Treasury.

6. The FSA will establish a Reserve Account in the amount of Four Million Dollars (\$4,000,000) that will be deducted from the Settlement Amount, deposited in an account established in the same manner as the Designated Account approved by the Court in which the Settlement Funds will be held for the benefit of the Class, and used to pay the costs of administering the FSA and distributing the Net Settlement Amount among eligible Class Members. Interest accruing on the Net Settlement Amount after calculation of Class Member shares will also be deposited into the Reserve Account. Class Counsel will, with the approval of the Court, retain a qualified Settlement Administrator to administer and distribute the Net Settlement Amount to Class Members. The fees and expenses of the Settlement Administrator will be paid from the Reserve Account. The Settlement Administrator will implement the distribution process for paying Class Members after all timely appeals (if any) have been resolved or the time for appeals has expired.

7. Any amount remaining in the Reserve Account after the initial distribution will be distributed to the Class in a second distribution, together with any undistributed funds from the Net Settlement Amount or interest accruing on the Reserve Account or the Net Settlement Amount. If the remaining amount is too small to justify the expense of distribution, Class Counsel may request the Court's approval to donate the remaining funds to a charitable organization.

8. Class Counsel, with the approval of the Court, will appoint a certified public accountant to serve as a Class Monitor. The Class Monitor will report to Class Counsel and the Government and will independently review and confirm or correct the work of the Settlement Administrator and certify its conclusions to the Court, including the accuracy of the Settlement Administrator's Class-Member share calculations, before any payment is made to a Class

Member. The Class Monitor will also verify that Claim Forms submitted by Class Members are properly completed and will verify that each Class Member that files such a Claim Form is paid its share. The fees and expenses of the Class Monitor will be paid from the Reserve Account.

9. The Settlement Amount will also be reduced by the amount awarded by this Court for attorneys' fees and costs incurred in securing this FSA and recovering the Settlement Amount for the benefit of the Class and for supervising the distribution of the Net Settlement Amount. As provided in Section IX of the FSA, Class Counsel intend to apply for an award of 8.5 percent of the Settlement Amount plus its reasonable costs in achieving this FSA, currently estimated to be \$1,500,000. The Government supports the amount of attorneys' fees requested as fair and reasonable. The U.S. Court of Appeals for the Tenth Circuit prefers the award of attorneys' fees in class actions to be based upon a percentage of the Settlement Amount (the Class common fund). *See, e.g., Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 853 (10th Cir. 1993). The application will be filed no later than the issuance of notice to the Class, and the notice will set out Class Counsel's fee and costs request. The parties will ask that the application be heard at the same time the motion for final approval of the FSA is heard. Class Members will have the right to object to the fee request.

10. Class Counsel will oversee the work of the Settlement Administrator and the Class Monitor regarding distribution of the Net Settlement Amount. The attorneys' fees and costs approved by the Court will cover prior services in achieving this settlement and all future services in supervising the post-judgment distribution of the Net Settlement Amount, including the submission of periodic reports to the Court and securing approvals respecting implementation of the settlement as required by the FSA. The FSA contemplates that the Court may reserve from the approved attorney's fee award no more than ten percent (10%) of the total fee award to

ensure that Class Counsel responsibly oversee the administration of the Net Settlement Amount. Class Counsel's duties will end upon this Court's granting a motion for approval of an accounting showing final distribution of the Settlement Amount, at which time any reserved portion of the attorneys' fee award will be paid to Class Counsel.

IV. CLASS ACTION SETTLEMENT APPROVAL PROCESS

Approval of a class action settlement is a two-step process. First, counsel submit the proposed terms of settlement, and the Court makes a preliminary fairness evaluation. If the Court preliminarily approves the settlement, the Court should further direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which time arguments and evidence may be presented in support of and in opposition to the settlement. Fed. R. Civ. P. 23(e)(2); Manual for Complex Litigation (4th), §§ 21.632-21.634, at 320-322 (2004). The class notice should set forth, among other things, the date of the fairness hearing and the procedure by which objections to the settlement may be made.

Second, at the fairness hearing, the Court will hear objections, if any, and make a final determination of the fairness of the settlement. Manual for Complex Litigation, *supra*, § 21.634, at 322. After the fairness hearing, the Court will make a final determination as to whether the proposed settlement is fundamentally fair, adequate and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002).

In this case, only the first step—preliminary approval and the notice to be directed to Class Members—is presently before this Court.

A. Preliminary Approval Standard of Review

In determining whether a proposed settlement is fair, reasonable and adequate, the Court should consider the following factors:

- (1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp., 314 F.3d at 1188; *In re Motor Fuel Temperature Sales Prac. Litig.*, 258 F.R.D. 671, 680 (D. Kan. 2009). While the Court should consider these factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well. *See In re Motor Fuel Temp Sales Prac. Litig.*, 258 F.R.D. at 680; *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). The purpose of preliminary approval is to determine whether the proposed settlement is within the range of possible approval, *i.e.*, whether there is any reason not to notify class members of the proposed settlement and proceed with a fairness hearing.

Freebird, Inc. v. Merit Energy Co., No. 10-1154, 2012 WL 6085135, at *4 (D. Kan. Dec. 6, 2012) (citing 4 Robert Newberg, *Newberg on Class Actions* § 11:25 at 38 (4th ed. 2002)).

B. This Court Should Grant Preliminary Approval to the Final Settlement Agreement

This Court should grant preliminary approval to the FSA, because the FSA satisfies the standard for preliminary approval. First, the FSA was reached after years of expensive and sometimes contentious litigation, and is the product of years of complex, technical, and sometimes contentious negotiations. Over the course of these negotiations, the parties worked hard to develop and implement a plan to settle the case in a fair and efficient manner. Rather than evaluate the thousands of contracts, compacts, and annual funding agreements at issue in this case on an individual basis, the parties have engaged expert statisticians to design and implement a method for taking a statistically valid sample of this universe. All parties made diligent efforts to locate and obtain the relevant documents identified in the sample, including the

contracts, compacts, annual funding agreements, audits, indirect cost rate proposals and agreements, trial balances and other relevant information. The parties each engaged expert accountants to evaluate the financial information contained in these documents in an attempt to determine an appropriate settlement amount for each of the sampled years of the sampled tribal contractors, known as “tribal years.” The parties’ statisticians extrapolated the results of the accountants’ analyses back to the universe of contracts, compacts, and annual funding agreements at issue in this case to help determine an agreed-upon settlement amount for the entire class, and then evaluated the results of that analysis to help the parties determine an appropriate way to distribute an appropriate share of the Net Settlement Amount to each Class Member. In the judgment of the parties, the data from the sampling process together with BIA CSC payment records provide by far the most expedient and equitable basis for distributing the Net Settlement Amount to Class Members. The Agreement thus provides appropriate monetary relief to all Class Members for their class-based claims.

Second, serious questions of law and fact exist, placing the ultimate result of the litigation in doubt. Although the Supreme Court upheld the plaintiffs’ right to full payment of contract support costs, no court has ever opined on how damages for breach of an ISDA contract should be measured, and the Government does not admit liability in the FSA here. Nor has any other court allowed tribes and tribal contractors to pursue ISDA claims as a class. *See, e.g., Pueblo of Zuni v. United States*, 467 F. Supp. 2d 1099 (D.N.M. 2006). Moreover, as revealed by the negotiations between the parties, the amount of damages to which plaintiffs would be entitled were they to prevail is subject to considerable debate.

Third, the value of an immediate recovery far outweighs the mere possibility of future relief after protracted and expensive litigation. The protracted and intensive settlement

negotiations showed that the parties are far apart on many factual, legal, and accounting issues materially affecting the calculation of the total amount of unpaid contract support costs and the resulting damages. If the case were not settled, the resolution of these issues would likely require litigation lasting many more years. The costs of continued litigation are high, and it is possible that the class could receive much less in the way of pecuniary relief. Finally, there is a risk that the class could be decertified.

Finally, counsel on both sides and the Class Representatives support the FSA as fair and reasonable. The support of counsel is “entitled to great weight.” *In re Bankamerica Corp. Securities Litig.*, 210 F.R.D. 694, 702 (E.D. Mo. 2002). Class Counsel are experienced in litigation and, particularly, in prosecuting claims under the Indian Self-Determination and Education Assistance Act, as well as other Indian tribal claims. The named Class representatives also participated in the settlement negotiations. Representatives of the Named Plaintiffs were present during almost all in-person negotiations with the Government, and were regularly consulted throughout the negotiation period. They frequently consulted in private with Class Counsel by telephone, email, and in person. The Class Representatives [have signed/support] the FSA. Such assent also supports the fairness of the settlement. “The representatives’ views . . . may be entitled to special weight because the class representatives may have a better understanding of the case than most members of the class.” *Id.* at 703 (citing Manual for Complex Litigation (3d) at § 30.44 (1994)).

Accordingly, this Court should grant preliminary approval to the FSA.

C. Rule 23 Notice Standard of Review

1. Provision of Notice

Rule 23(e) requires that all class members be given notice of any proposed class action settlement in a manner directed by the Court. *See* Fed. R. Civ. P. 23(e)(1)(B). This may require

individual notice to class members who can be identified with reasonable effort. Fed. R. Civ. P. 23 Cmte. Notes on Rules–2003 amend. (individual notice to all class members that can be identified with reasonable effort “may [be] require[d]” when, as here, “class members are required to . . . fil[e] claims to participate in the judgment . . .”). However, actual notice to all class members is not required. *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 944, 946 (10th Cir. 2005) (neither Due Process nor Rule 23 “require *actual* notice to each party intended to be bound by the adjudication of a representative action;” actual notice provided to 70 percent of class deemed sufficient).

2. Contents of Notice

In addition, to ensure the class members are properly informed of the proposed settlement and its potential to bind class members, the notice should:

- describe the essential terms of the proposed settlement;
- disclose any special benefits provided to the class representatives;
- provide information regarding attorneys’ fees;
- indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to the settlement; and
- prominently display contact information of class counsel and the procedure for making inquiries.

See Manual for Complex Litigation (4th), *supra*, § 21.633 at 321-22; *Navarro-Ayala v.*

Hernandez-Colon, 951 F.2d 1325, 1336 (1st Cir. 1991) (discussing Rule 23(e)’s notice

requirements). A notice is “adequate if it may be understood by the average class member.”

4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11:53, at 167 (4th ed. 2002).

D. The Parties’ Proposed Class Action Settlement Notice Complies with Rule 23

This Court should approve the parties’ proposed Notice of Class Action Settlement and direct it to be sent to Class Members.

First, the Notice will be directed in a reasonable manner to all Class Members. Under the terms of the FSA, Class Counsel will: (i) send the Notice to all Class Members whose addresses can be found with reasonable efforts through first-class mail to their last known address, as confirmed by the BIA's records; (ii) publish the Notice in either Indian Country Today or News From Indian Country and to at least one internet website focused on providing news and information to Indian country; and (iii) shall post the Notice on the Class website at www.rncsettlement.com. Additionally, defendants will: (i) make their best efforts to send a copy of the Notice to each and every Class Member by first-class mail and, where available, by email; and (ii) publish the Class Notice on the Interior Business Center's Indirect Cost website, www.doi.gov/ibc/services/Indirect_Cost_Services/indian_tribes.cfm, and on the BIA's website, www.bia.gov.

Second, the proposed "Notice of Proposed Settlement of Class Action Lawsuit," which is attached as Appendix 1 to the FSA, includes the required key components for a notice. The draft Notice describes the essential terms of the FSA. It also discloses the incentive award of a twenty percent enhancement to each Class Representative's share of the Net Settlement Amount. It provides information regarding attorneys' fees and costs. It will indicate the time and place for the fairness hearing, and it prominently displays the contact information of Class Counsel and the procedure for making inquiries.

Also pursuant to Rule 23(e), the Notice will provide Class Members with instructions on how to access a complete copy of the FSA on Class Counsel's website. Finally, the Notice will inform Class Members of their right to file and serve objections regarding the FSA or the attorneys' fees and costs requested by Class Counsel up to 45 days after the postmark date of the Class Notice mailed by Class Counsel.

E. At the Settlement Stage, This Court Should Limit the Opportunity of Class Members to Request Exclusion From the Class to Those Class Members That Have Not Previously Had That Opportunity

Consistent with its past orders, this Court should exercise its discretion and decline to give those Class Members who have already had an opportunity to opt out an additional right to request exclusion at the settlement stage. Rule 23(e)(4) provides that, when a class action was previously certified under Rule 23(b)(3), a court “may refuse to approve the settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.” The Advisory Committee notes to the 2003 Amendment to Rule 23(e) state that:

The decision whether to approve a settlement that does not allow a new opportunity to elect exclusion is confided to the court’s discretion. The court may make this decision before directing notice to the class under Rule 23(e)(1)(B) or after the Rule 23(e)(1)(C) hearing.

Fed. R. Civ. P. 23 Cmte. Notes on Rules–2003 amend. *See also In re HealthSouth Corp. Securities Litig.*, No. 07-11908, 2009 WL 1684422, 334 Fed. Appx. 248, 254 n. 12 (11th Cir. 2009) (“In any case, as the word ‘may’ in Rule 23(e)(4) makes clear, that ‘[t]he decision [to allow a second chance to opt out at the settlement stage] is wholly within the discretion of the district court.’”). Applying Rule 23(e)(4), many courts have rejected requests to provide existing class members that have already been given the opportunity to opt out at an earlier stage with an additional opportunity to opt out at the settlement stage. *See, e.g., Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 354 (6th Cir. 2009) (Objector’s “clients, at any rate, received a second opt-out opportunity. What he wants is a third one, which the district court permissibly denied.”); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114-15 (2d Cir. 2005) (objecting class member “was required to opt out at the class notice stage if it did not wish to be bound by the settlement.”); *Class of Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1289 (9th Cir. 1992) (“Nor is

the district court's approval of the Consolidated Settlement flawed because it did not require that members of the class be afforded an[other] opportunity to opt out of the resulting settlement.”); *Lowery v. City of Albuquerque*, No. 09-457-JB, 2013 WL 1010384, *42 (D.N.M. Feb. 27, 2013) (“Because the class was notified twice before of their ability to opt out, the Court cannot conclude that the Second Proposed Settlement is unfair because it did not allow class members to opt out a third time at the settlement stage.”); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, *3 (E.D. Pa. May 11, 2004) (“We are aware of no significant developments since the original opt-out that would require us to provide for a second opt-out period. . . . Moreover, Class members still have the opportunity to object to the terms of the Settlement.”) (citing Manual for Complex Litigation (4th) § 21.611 (2004)).

In this case, the Court previously provided Class Members the opportunity to request exclusion from the Class after the Class was certified and after the Shortfall and DCSC Claims were added. *See* Class Notice (Rate Claim), Doc. No. 124 (Mar. 21, 1994); Order Approving Class Notice (Shortfall Claim), Doc. No. 378 (Dec. 17, 1999); Order Approving Class Notice (DCSC Claim), Doc. Nos. 634-35 (Mar. 27, 2002).¹ In response to the March 21, 1994, notice, four tribes timely requested exclusion from the Class: (i) the Navajo Nation; (ii) the Confederated Tribes of Siletz; (iii) the Eastern Shoshone Tribe; and (iv) the White Mountain Apache Tribe. *See* Requests for Exclusion, Doc. Nos. 130, 131, 134 & 136 (May-June 1994). All four tribes requested and were granted permission to re-enter the Class and all four tribes then negotiated individual recoveries. *See, e.g.*, Orders, Doc. Nos. 247, 250, 251, 462 & 519-22.

¹ We note that the Court's Opinion and Order certifying a nationwide class of all federally-recognized tribes and tribal contractors that have BIA ISDA contracts did not specify whether it was certifying the class pursuant to Rule 23(b)(2) or (3). *See* Doc. Nos. 95-96. In allowing absent Class Members to request exclusion from the class, however, the Court treated the class as certified under Rule 23(b)(3).

In granting preliminary approval to PSA-I, PSA-II, and PSA-III, this Court exercised its discretion, consistent with Rule 23(e)(4), and declined to give existing Class Members an additional opportunity to request exclusion from the Class. *See* Order Granting Prelim. Approval to PSA-I, Doc. No. 197 (Sept. 8, 1998) “(No Class Member in existence prior to April 12, 1994 . . . may opt-out now.”); Order Granting Prelim. Approval to PSA-II, ECF Nos. 678-79 (Sept. 9, 2002) (declining to give existing Class Members additional right to opt out); Order Granting Prelim. Approval to PSA-III & Directing Notice of PSA-III, ECF Nos. 1138, 1140 (May 19, 2008) (same).

Consistent with this Court’s past exercises of discretion declining to give Class Members an additional right to request exclusion at the settlement stage, the proposed Notice for the FSA informs those Class Members that have previously received an opportunity to opt out that they will not have an additional right to request exclusion at the settlement stage. Any Class Member that believes such designation is erroneous may, of course, object to such designation, just as they may object to any other aspect of the proposed FSA.

In regard to the Court’s discretion to allow Class Members the right to request exclusion at the settlement stage arising under Rule 23(e)(4), we note that the proposed FSA provides:

In the event the Court authorizes 15 or more Class Members to opt out and the amount that shall be retained by Defendants exceeds 15 percent of the Settlement Amount, the Defendants shall have the exclusive right to declare this FSA null and void. Defendants will notify Class Counsel in writing of any such declaration no more than 15 days after the Court’s decision granting such Opt Outs, after which such right shall expire.

FSA § V.E. Thus, allowing Class Members that have already had an opportunity to request exclusion another opportunity to do so at the settlement stage could imperil the FSA for the rest of the Class.

The parties have, however, identified 74 Tribes and tribal contractors that first entered into BIA ISDA contracts after the March 27, 2002 notice offering Class Members the opportunity to request exclusion. These new Class Members have not yet had an opportunity to request exclusion from the Class. Rule 23(c)(2)(v) provides that “[f]or any class certified under Rule 23(b)(3), the court must direct notice that clearly and concisely states, in plain language: . . . that the court will exclude from the class any member who requests exclusion.” Fed. R. Civ. P. 23(c)(2)(v). In granting preliminary approval to PSA-I, this Court approved a notice providing that “[o]nly new Class Members who first became Class Members after April 12, 1994, the date the original notice of this class action was sent, shall have the right to file a notice of intent to opt-out of this class action at this time.” Order Granting Prelim. Approval to PSA-I, Doc. No. 197. Consistent with this Court’s prior Order allowing new Class Members to request exclusion from the Class, the present Notice informs those class members that have not yet received an opportunity to opt out that they have a right to request exclusion from the Class.

V. CONCLUSION

This Court should grant the parties’ Joint Motion for Preliminary Approval, approve the content of the class notice, direct that opt outs should be limited to those class members that have not yet had an opportunity to opt out of the class, and direct that the Notice be sent to class members and published in the manner provided by the FSA.

Dated: Sept. 16, 2015

Respectfully Submitted,

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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 others similarly situated,

Plaintiffs

v.

SALLY JEWELL, Secretary of the
Interior, *et al.*,

Defendants.

No. 1:90-CV-957-JAP/KBM

FINAL SETTLEMENT AGREEMENT

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APPENDIX 1 NOTICE OF FINAL SETTLEMENT

APPENDIX 2 DISTRIBUTION PERCENTAGES FOR EACH CLASS MEMBER

APPENDIX 3 SETTLEMENT CLAIM FORM

This Final Settlement Agreement (“FSA”) contains the agreement reached by the Parties to settle and resolve all remaining claims in this action.

I. INTRODUCTION

WHEREAS, in this class action the Plaintiff Class makes various claims under the Contract Disputes Act (“CDA”), 41 U.S.C. § 7101 *et seq.*, and the Indian Self-Determination Act (“ISDA”), 25 U.S.C. § 450 *et seq.*, concerning contract support costs (“CSC Claims”); and

WHEREAS, on May 25, 1999, the Court approved a partial settlement of a portion of the Class’s CSC Claims for years prior to 1994, but reserved for further litigation other CSC Claims (Dkt. No. 287); and

WHEREAS, on December 6, 2002, the Court approved a second partial settlement of additional CSC Claims, but reserved for further litigation any monetary claims for years 1994 forward concerning indirect CSC Claims, any monetary claims for years 1995 forward concerning direct CSC Claims, and all claims for equitable relief (Dkt. No. 731); and

WHEREAS, on August 27, 2008, the Court approved a third partial settlement of all of the Class’s CSC claims seeking equitable (declaratory and injunctive) relief (Dkt. No. 1159); and

WHEREAS, by Opinion issued June 18, 2012 (*Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012)), the United States Supreme Court held Defendants could not justify the failure to pay in full the contract support costs of an individual Tribal Contractor on the ground that Congress did not appropriate sufficient funds to meet the total contract support cost requirement of all Tribal Contractors, so long as the appropriation was sufficient to cover the contract support cost requirement of that individual Tribal Contractor, and remanded this action to the district court for further proceedings consistent with that opinion; and

WHEREAS, the Settlement Amount to be paid by Defendants under § II.M. of this FSA will be paid from the Judgment Fund established by 31 U.S.C. § 1304, as occurred in the prior partial settlements; and

WHEREAS, in *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1095 (D.N.M. 1999), U.S. District Judge Hansen observed that, although the Contract Disputes Act requires that the Judgment Fund be reimbursed after an award “by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes,” repaying judgments awarded to the Class in this action out of appropriations to the Bureau of Indian Affairs (BIA) for the operation of programs would be “inequitable” and therefore retained jurisdiction to ensure that no such inequity would occur; and

WHEREAS, in the Appropriations Act for Fiscal Year 2015, Congress in section 407 prohibited any appropriations made to the BIA from being used “for repayments of payments for settlements or judgments awarding contract support costs for prior years;” and

WHEREAS, the Parties now wish to avoid the expense, delay, risk, and inconvenience of further litigation over damages for CSC Claims remaining in this action;

NOW THEREFORE, in reliance upon the representations, mutual promises, covenants, releases, and obligations set out in this FSA, and for good and valuable consideration also set out below, the Plaintiff Class and Defendants in this action, by and through their respective counsel, now hereby stipulate and agree to finally settle and resolve all remaining CSC Claims in this action.

II. DEFINITIONS

The following terms, as they are used in this FSA, shall have the meanings stated below:

A. Parties

1. Plaintiffs, the Class, Class Members, or Tribal Contractors

“Plaintiffs,” “the Class,” “Class Members” or “Tribal Contractors” are, unless context demands otherwise, interchangeable terms and consist of the named Plaintiffs Ramah Navajo Chapter, Oglala Sioux Tribe, and Pueblo of Zuni, and all Indian Tribes and tribal organizations that have contracted or entered into self-governance funding agreements with the Secretary of the Interior through the BIA or the Office of Self Governance (“OSG”) (collectively hereafter, “BIA”) under the ISDA during any year between fiscal years 1994 through 2013. The Class includes the following Tribes which at one time opted out of the Class, but were thereafter permitted to re-enter the Class by Orders dated September 22, 1998 (Dkt. No. 198), December 3, 1998 (Dkt. No. 247), December 8, 1998 (Dkt. No. 250), August 1, 2000 (Dkt. No. 462): the Navajo Nation, the White Mountain Apache Tribe, the Eastern Shoshone Tribe, and the Confederated Tribes of Siletz Indians of Oregon. In the event a Class Member no longer exists, such Class Member’s rights under this FSA shall belong to such Class Member’s successor entity or, in the event no such entity exists, then the Tribe or Tribes by whose authority such non-existent Class Member contracted or entered into a self-governance funding agreement as defined above.

2. Defendants

For purposes of this settlement, “Defendants” are: Sally Jewell, Secretary of the Interior, in her official capacity, and her successors; Kevin Washburn, Assistant Secretary-Indian Affairs, in his official capacity, and his successors; and the United States of America.

B. Class Counsel

The term “Class Counsel” as used herein are the Counsel listed in Section XXII.A., below, and their respective firms.

C. BIA ISDA Contract

The term “BIA ISDA Contract” means (1) a self-determination contract with the BIA awarded under Title I of ISDA as defined in section 4(j) of the ISDA (25 U.S.C. § 450b(j)), including grants and cooperative agreements, (2) a funding agreement awarded under 25 U.S.C. § 450l(c) of the ISDA, and (3) a compact or funding agreement with OSG awarded under Title III of Pub. L. 93-638, as added Pub. L. 100-472, Title II, § 209, 102 Stat. 2296 (1988) (repealed), or under section 403(b)(1) of Title IV of the ISDA, 25 U.S.C. § 458cc(a).

D. Contract Support Costs

“Contract support costs” (CSC) are defined by the Indian Self-Determination Act, 25 U.S.C. § 450j-1(a)(2), as “an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management” Pursuant to 25 U.S.C. § 450j-1(a)(3)(A), CSC “include the costs of reimbursing each tribal contractor for reasonable and allowable costs of — (i) direct program expenses for the operation of the Federal program that is the subject of the contract, and (ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided [under section 106(a)(1) of the Act].” CSC are “administrative expenses.” *Cherokee v. Leavitt*, 543 U.S. 631, 634-35 (2005). “Indirect” contract support costs (“indirect CSC”) are administrative costs that are shared among various contracted tribal programs and other tribal

programs, such as legal, personnel, accounting and financial support. “Direct” contract support costs (“direct CSC” or “DCSC”) are specific administrative and other costs that are associated with a particular BIA program under contract, and are not part of the undifferentiated indirect cost pool supporting all tribal activities. DCSC include direct costs such as workers’ compensation insurance, which are not included in the amount that the BIA would have spent to operate a particular program under contract.

E. CSC Claims

The CSC claims are defined as follows:

1. Calculation Claim

The “Calculation Claim” refers to any claim for relief in connection with a BIA ISDA contract, but for purposes of this FSA, also includes any claims challenging the Interior Business Center’s (IBC) (formerly the National Business Center) or Department of the Interior (“DOI”) Office of Inspector General’s carryforward templates, policies, and practices previously in effect or in effect as of the date of execution of this FSA. PSA-I, Section 3.a.i, provides as follows:

“Plaintiffs’ Cause of Action” is the Plaintiffs’ claim stated in the First Amended Complaint filed January 2, 1991. The claim sought monetary and equitable relief based on shortfalls in payment of indirect costs associated with contracts entered into under the [ISDA] arising from Defendants’ use of a method based on OASC-10 and [Office of Management and Budget] Circular A-87 for determining indirect cost rates or their equivalent and payments thereon which: (a) included funding provided by Other Federal Agencies in the direct cost base (b) resulting in a lower indirect cost rate which was then (c) applied only to the BIA’s portion of the direct cost base resulting in (d) determination of BIA contract support (indirect cost) entitlements which were lower in amount than required by [ISDA] because (e) Other Federal Agencies did not fully pay, and were known not to fully pay, supplemental indirect costs (f) which caused lower contract support (indirect cost) recoveries by the Class. [Inserts added]

This claim encompasses all the variations of this claim that have been asserted in this case.

2. Shortfall Claim

The “Shortfall Claim” refers to any claim for relief, in connection with a BIA ISDA contract, alleging that the BIA and DOI failed to pay Plaintiffs the amount generated by multiplying each Plaintiff’s indirect cost rate by the BIA’s direct program base, less passthroughs and exclusions, pursuant to Office of Management and Budget (“OMB”) Circular A-87, 2 C.F.R. Part 225, OMB Circular A-21, 2 C.F.R. Part 220, and OMB Circular A-122, 2 C.F.R. Part 230, and other applicable law, or the full amount of any negotiated contract support costs.

This claim also includes damages for Defendants’ alleged failure to pay indirect CSC on the portion of Direct Contract Support Costs (“DCSC”) that were not paid to Plaintiffs.

3. The Direct Contract Support Cost Claim

The “DCSC Claim” refers to any claim for relief in connection with a BIA ISDA contract alleging that Defendants failed to comply with 25 U.S.C. § 450j-1(a)(3)(A)(i) of the ISDA as regards DCSC. This claim has already been resolved for the 1994 fiscal year pursuant to the Parties’ Second Partial Settlement Agreement, as defined below in Section II.G.

4. The Remaining Contract Support Cost Claims

The Remaining CSC Claims are all additional claims for damages arising out of the Defendants’ alleged failure either (1) to properly calculate or (2) to pay in full, either indirect CSC or DCSC, including without intending any limitation, all claims portions of which were settled in PSA I, PSA II and PSA III, except for reserved claims.

F. PSA I

The Parties’ first partial settlement agreement, approved by this Court on May 25, 1999 (Dkt. No. 287), is hereinafter referred to as “PSA I.”

G. PSA II

The Parties' second partial settlement agreement, approved by this Court on December 6, 2002 (Dkt. No. 731), is hereinafter referred to as "PSA II."

H. PSA III

The Parties' third partial settlement agreement, approved by this Court on August 27, 2008 (Dkt. No. 1138), including its Appendices A through G, is hereinafter referred to as "PSA III."

I. Final Settlement Agreement

"Final Settlement Agreement" or "FSA" means this agreement and all of its Appendices.

J. Settled Years

"Settled Years" means fiscal years 1994 through 2013.

K. Final Approval

"Final Approval" is the entry of the Final Judgment by the Court approving this FSA after notice and hearing.

L. Effective Date

"Effective Date" of this FSA shall be (1) the date upon which the Final Judgment approving this FSA becomes non-appealable, or (2) in the event of an appeal by a Class Member based upon a timely-filed objection to this FSA, upon the date of final resolution of said appeal (absent a Court order disapproving this FSA). In the event of a final Court order disapproving this FSA (and absent an appellate ruling vacating or reversing that disapproval), this FSA shall be null and void.

M. Settlement Amount

The “Settlement Amount” is \$940,000,000.00, plus post-judgment interest as specified in Section VII.B, below.

N. Net Settlement Amount

The “Net Settlement Amount” or “NSA” is the amount available for Distribution to Tribal Contractors after the Reserve Account and attorneys’ fees, costs, and other expenses have been deducted from the “Settlement Amount,” as provided in Section VIII.A, below.

O. Reserve Account

The “Reserve Account” is an account established and funded for the costs of distributing the Net Settlement Amount to Class Members and as otherwise authorized in this FSA.

P. Settlement Administrator

“Settlement Administrator” is a person or firm responsible for managing the allocation and distribution of the Settlement Amount as set forth in this FSA, and who has been approved by the Court.

Q. Class Monitor

“Class Monitor” is a person or firm charged with the duty to independently review and confirm or correct the work of the Settlement Administrator, and who has been approved by the Court.

R. Claims Period

The Claims Period is the time set by the Court, including any extension of time, for the submission of Claim Forms attached hereto as Appendix 3.

S. Distribution

“Distribution” is the process in which Tribal Contractors will receive a portion of the “Settlement Amount.” This process is further defined in section VIII.D below.

T. Distribution Percentage

Subject to Section VII.C, the term “Distribution Percentage” refers to each Class Member’s share of the Net Settlement Amount, as defined in Section VIII.D.1, and of any residual balance in the Reserve Account, as defined in Section VIII.C.5. The Distribution Percentage is based on the amount of CSC already paid to each Class Member during the period 1994 through 2013, provided, however, that each Class Member shall receive a minimum payment of approximately \$8,000 for each year that it had a BIA ISDA contract during the fiscal years 1994 through 2013. Each Class Member’s Distribution Percentage is set out in Appendix 2.

U. Treasury Debt Collection Authorities

“Treasury Debt Collection Authorities” are established by 31 U.S.C. § 3716 as part of the Debt Collection Improvement Act, and 26 U.S.C. § 6331(h) of the Internal Revenue Service Tax Code. Payments to each Tribal Contractor from the Judgment Fund as a result of this FSA are subject to United States Department of the Treasury Debt Collection Authorities. Subject to Section VII.B, the Bureau of Fiscal Service will offset and/or levy any delinquent debt of a Tribal Contractor from that Tribal Contractor’s share of the Settlement Amount and will notify that Tribal Contractor of that debt.

V. Designated Bank

“Designated Bank” means a bank that has a Veribanc (www.veribanc.com) rating of Green with at least one star and one for which neither the bank nor any of its senior officers

appear in the Excluded Parties List System (www.epls.gov), which is a list of entities and individuals suspended or debarred from doing business with the Federal Government. For purposes of this FSA, the Designated Bank will be Wells Fargo Bank, N.A., or such other bank as is approved by the Court if acceptable terms and conditions with the Wells Fargo Bank cannot be reached.

W. Designated Account

“Designated Account” means either

(1) A fully collateralized commercial public funds bank depository account at the Designated Bank. That account shall be established by Class Counsel by means of (i) a standard bank customer account agreement, and (ii) a collateral security agreement to be approved by the Court and executed by the Designated Bank, any custodial bank contracted to hold the pledged collateral, and the Class Representatives acting for the Class. Class Counsel are authorized to instruct the Designated Bank to invest some of the deposited funds into U.S. Treasury investments when not needed to cover checks drawn on the account, pursuant to an investment plan approved by the Court; or

(2) A non-collateralized commercial bank depository account at the Designated Bank to be administered by Class Counsel in coordination with an investment plan limited to U.S. Treasury investments for funds not needed to cover checks drawn on the account, all to be approved by the Court.

For the account arrangement selected, the named Class Representatives will be the account holders acting for the Class, and Class Counsel will be the designated signatories appointed by the Class Representatives to approve dispersals from the account, all subject to approval of the Court.

X. Fairness Hearing

Fairness Hearing means the hearing at which the Court will hear objections, if any, to the settlement and fee application and thereafter render a ruling approving or declining to approve the settlement, and acting upon the fee application.

III. NO ADMISSION OF LIABILITY

Defendants expressly deny any wrongdoing or liability. This FSA represents the compromise of disputed claims. It reflects the Parties' recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time and resources. The FSA does not constitute, and will not under any circumstances be deemed to constitute, an admission by either Party as to the merits, validity, or accuracy, or lack thereof, of any of the claims or defenses in this case. The terms of this FSA; the negotiations leading up to this FSA; the data, documents, filings, statements made in connection herewith; and the information exchanged between the Parties in the course of those negotiations, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by the Defendants; nor shall any fact, matter or proposition be used in any manner or for any purpose, in any subsequent proceedings in this action or in any other action, whether judicial or administrative, except that the documents and information may be presented to the Court by the Parties to this FSA solely to obtain the Court's final approval of this FSA. This Section shall not bar any court's right to interpret the scope of this FSA in this or any other proceeding.

IV. SETTLED AND RESERVED CLAIMS

In consideration for Defendants' promises as set forth herein in Sections VII and IX, Plaintiffs agree as follows:

A. Settled Claims

1. This FSA 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 encompassed by the CSC Claims defined in section II.E that were or could have been raised in this action in connection with BIA ISDA contracts awarded for fiscal years 1994 through 2013. This includes CSC Claims asserted by individual Class Members in separate contract disputes.

2. This FSA 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 encompassed in the CSC Claims that any individual Class Member could have raised against Defendants in connection with BIA ISDA contracts for fiscal years 1994 through 2013.

3. This FSA also resolves and extinguishes any and all claims, counterclaims, demands, rights, causes of action, and counts for money damages and/or specific monetary relief under any theory of recovery that Defendants could have raised or asserted against the Class or any Class Member, arising from or related to any payment, overpayment, nonpayment, or underpayment of contract support costs in connection with BIA ISDA contracts for fiscal years 1994 through 2013.

4. Release of the above-described claims, counterclaims, demands, rights, causes of action and counts for money damages and/or specific monetary relief is effective on Defendant's payment of the Settlement Amount as described in VII.A.

5. Nothing in this FSA shall limit the rights of any Party to enforce this FSA as set forth in Section X.

B. Reserved Claims and Defenses

Notwithstanding any other provision in this FSA, the Parties agree that the following claims and defenses are not settled, dismissed, released, or otherwise extinguished, and are expressly reserved:

1. Individual Claims

a. Any pending or future claim or challenge to any individual cost determinations made by Defendants relating to whether a particular cost is allowable or reasonable under applicable OMB Circulars or under any other provision of law, and any claim relating to mathematical, computational, clerical or input errors in the calculation of indirect cost rates which has occurred or may occur for a particular Class Member, and which is not the result of a government policy, practice or procedure applicable to all Tribal Contractors, are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding, except that such reserved claim shall not include claims for monetary relief for the settled years;

b. Any individual claims for pre-award or start-up costs under 25 U.S.C. § 450j-1(a)(5) or (6) which arose in the settled years are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding;

c. Any CSC claims arising in or relating to fiscal year 2014 or thereafter, except as foreclosed by PSA III, are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding;

d. Any individual Class Member claim that Defendants or any of them have failed or refused to pay a previously agreed amount for contract support costs to a BIA ISDA contract, but not paid, which is not the result of a BIA policy, practice or procedure

applicable to all Tribal Contractors, are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding.

2. Interior CSC Policy Challenges

Any claim which challenges (i) any aspect of the Interior CSC Policy as defined in PSA-III or (ii) the legality of any rescission, amendment or change of that policy, except that such reserved claim shall not include claims for monetary relief for the settled years;

3. Other Reserved Claims

a. All claims arising from contracts awarded by any Federal agency other than BIA ISDA contracts;

b. All claims unrelated to direct and indirect CSC under the ISDA;
and

c. All claims to enforce the terms of PSA I, PSA II, or PSA III.

4. Reservation of Government Defenses and Counterclaims

Defendants reserve the right to raise any defenses or counterclaims not barred by Section IV.A.3 against any claim that has been reserved by Plaintiffs in this Section.

5. Statute of Limitations

Nothing in this FSA shall be construed to waive or extend the statute of limitations for pursuing in any proceeding any claims or counterclaims reserved in this FSA.

6. Reservation of Government Fraud Claims

Defendants reserve the right to assert any claim or claims for fraud that they have or may have against any Tribal Contractor or its officers, agents, or employees arising out of or relating to this action, the claims, or performance of the BIA ISDA contracts, regardless of whether they were included in the pleadings. Plaintiffs reserve the right of Class Members to raise any

defenses or counterclaims against any claim of fraud that has been reserved by Defendants in this Section.

V. PROCEDURES GOVERNING SETTLEMENT APPROVAL

The Parties agree that this FSA shall be implemented in the following manner:

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

Upon execution, the Parties shall jointly and promptly file this FSA and request that the Court enter an Order Granting Preliminary Approval of the FSA, Directing Notice to the Class, and Setting a Date for the Fairness Hearing.

B. Distribution of the Notice to Class Members

1. Upon entry of the Order Granting Preliminary Approval of the FSA and Directing Notice to the Class, Class Counsel shall cause a Class Notice, substantially in the form of the “Notice of Final Settlement To All Members of the Ramah Class” (“Class Notice”) attached as Appendix 1, to be mailed to all Class Members by first-class mail; shall submit the summary Class Notice for publication in either Indian Country Today or News From Indian Country and to at least one internet website focused on providing news and information to Indian country; and shall post the Class Notice on the Class website at www.rncsettlement.com. Class Counsel shall mail and publish the Class Notice no later than the date specified in the Court’s Order granting preliminary approval of this FSA. Defendants shall assist Class Counsel in securing accurate addresses for all Class Members and in sending the Class Notice to the Class.

2. Defendants shall make best efforts to send a copy of the same notice to each and every Tribe and tribal organization by first-class mail and, where available, by email, within 30 days of the Court’s Order granting preliminary approval of this FSA, provided that failure to timely mail shall not constitute a reason to delay the Fairness Hearing.

3. Defendants agree to publish the Class Notice on the IBC Indirect Cost website, http://www.doi.gov/ibc/services/Indirect_Cost_Services/indian_tribes.cfm, if operational, and on the BIA's website, <http://www.bia.gov/>, if operational, within 30 days of the Court's Order granting preliminary approval of this FSA, provided that failure to publish, or to timely publish, this notice on the IBC or BIA websites shall not constitute a reason to delay the Fairness Hearing.

C. Agreement to Bear Cost of Providing Notice

Class Counsel agree to initially bear the cost of providing notice to the Class, subject to reimbursement from the Reserve Account described in Section VIII.C, except for those costs associated with the publication of the Class Notice on the IBC and BIA websites and those costs associated with the mailing or emailing of the Class Notice pursuant to Section V.B.2 above, which costs shall be borne by Defendants.

D. Objections

1. Any Class Member that wishes to object to the proposed settlement or attorneys' fee application must file a Notice of Intention to Appear and Object (Objection) with the Clerk of the Court and deliver it to all listed Counsel, and must appear at the Fairness Hearing described in Section V.F, below. If more than one Class Member makes the same objection, the Court may designate one of them to present the objection at the Fairness Hearing.

2. Objections must be sent to the Clerk of Court, 333 Lomas NW, #270, Albuquerque, New Mexico 87102. Each Objection must include (i) a reference to the case number, "No. 90-CV-957;" (ii) a statement of each reason for the Objection; (iii) the specific ground(s), if any, for each reason, including any legal support, evidence, papers or briefs the Class Member wishes the Court to consider; (iv) the person or persons who will present the

Objection at the hearing; and (v) the signature of the responsible official or attorney for the Class Member making the Objection. All Objections must be sent to the attorneys listed in Section XXII.

3. Objections and any other motions or applications for relief must be filed with the Court and served within the time specified in the Class Notice, which date shall be not less than 45 days after the postmark date of the Class Notice mailed by Class Counsel. Within 30 days of the expiration of the period for Class Members to file Objections, Class Counsel may file a Supplemental Memorandum responding to any such Notices of Objections or other motions or applications. Within 45 days of the expiration of the period for Class Members to file Objections, Defendants may file a response.

E. Limited Opportunity to Request Exclusion from the Class

1. As noted in Section II.A.1, the Class consists of all Indian Tribes and tribal organizations that have entered into BIA ISDA contracts, including those Tribes which at one time opted out of the class action but were thereafter permitted to re-enter the Class by Orders dated September 22, 1998 (Dkt. No. 198), December 3, 1998 (Dkt. No. 247), December 8, 1998 (Dkt. No. 250), and August 1, 2000 (Dkt. No. 462). Pursuant to Fed. R. Civ. P. 23(b), and by Orders dated September 30, 1999 (Dkt. No. 347) and March 27, 2002 (Dkt. 634), additional opt out opportunities were afforded to all Class Members, and no Member of the Class opted out of the Class within the time required by those Orders. However, a Class Member that has not previously had an opportunity to opt out from the Class may file with the Court a written request to be excluded from the Class by the deadline set by the Court. In the event the Court permits a Class Member to opt out of this Settlement, such Class Member's share of the Settlement Amount, as reflected in the Distribution Percentages attached to this FSA as Appendix 2, shall be

retained by Defendants and the Settlement Amount specified in Section II.M. of this FSA shall be reduced accordingly, provided that in such event the Distribution Percentage for each remaining Class Member set out in Appendix 2 shall be adjusted accordingly to remove the share previously allocated to the withdrawing Class Member.

2. In the event the Court authorizes 15 or more Class Members to opt out and the amount that shall be retained by Defendants exceeds 15 percent of the Settlement Amount, the Defendants shall have the exclusive right to declare this FSA null and void. Defendants will notify Class Counsel in writing of any such declaration no more than 15 business days after the Court's decision granting such Opt Outs. Absent such notice, defendants' right shall expire at the end of the 15-business-day period, and the Court may grant final approval of this FSA.

3. If an individual Class Member appeals a Court decision regarding the right to opt out, such Class Member's share of the Settlement Amount, as reflected in the Distribution Percentages attached to this FSA as Appendix 2, shall be retained by Defendants and the Settlement Amount specified in Section II.M. of this FSA shall be reduced accordingly, provided that in such event the Distribution Percentage for each remaining Class Member set out in Appendix 2 shall be adjusted accordingly to remove the share previously allocated to the withdrawing Class Member. The portion of the Settlement Amount that is not disputed shall be distributed as set forth in Section VIII.D. In the event that any appeal challenging a Class Member's right to opt out also challenges the overall validity of the FSA, the provisions in Section VI shall apply.

F. Fairness Hearing

At the Fairness Hearing the Parties shall request the Court's final approval of this FSA and shall present such evidence and arguments as may be appropriate. Class Counsel and

Defendants shall also be heard at the Fairness Hearing on Class Counsel's application for attorneys' fees and costs. The Court has the right to reschedule or adjourn and reconvene the Fairness Hearing, and no such rescheduling or adjournment shall affect the validity of this FSA.

VI. APPEALS

In the event of an appeal by a Class Member from the final judgment approving this FSA, the allocation and distribution of the Settlement Amount and implementation of the related provisions of this FSA shall be stayed in full or in part, as directed by the Court, pending final determination of any and all such appeals.

VII. AMOUNT AND TIMING OF PAYMENT

A. Settlement Amount and Completion of Defendants' Duties

In consideration of this FSA, Defendants shall pay the Class the Settlement Amount, subject to the requirements of Treasury Debt Collection Authorities, and shall use their best efforts to do so expeditiously. Upon payment of the Settlement Amount, Defendants' duties under this FSA shall be deemed completed. No offset and/or levy made consistent with this Section shall be deemed a breach of this FSA.

B. Timing and Manner of Payment of Settlement Amount to the Class

1. Subject to the requirements of Treasury Debt Collection Authorities, the Settlement Amount shall be Direct Deposited by the Treasury Department from the Judgment Fund, 31 U.S.C. § 1304, into the Designated Account established by Class Counsel. Payments to each Tribal Contractor as a result of this FSA are subject to Treasury Debt Collection Authorities, as defined in Section II.U. The U.S. Treasury Department, Bureau of Fiscal Service will offset and/or levy any delinquent debt of a Tribal Contractor to the United States from that Tribal Contractor's share of the Settlement Amount and will notify that Tribal Contractor of that

debt. Defendants or the Department of Justice will exercise their best efforts to ensure that information about such offsets and/or levies is also timely sent to Class Counsel and to the Settlement Administrator to enable the Settlement Administrator to carry out those duties set out at Section VIII.D.3.

2. The Treasury Department will make an initial deposit of the portion of the Settlement Amount that includes amounts for Distribution to those Tribal Contractors that do not have debts that must be offset and/or levied pursuant to Treasury Debt Collection Authorities, for Class Counsel's Attorneys' Fees and Costs, and for the Reserve Account. For the remaining portion of the Settlement Amount, the Treasury Department will make separate deposits reflecting the net amount due to each Tribal Contractor following any offset and/or levy made pursuant to Treasury Debt Collection Authorities.

3. Class Counsel shall establish the Designated Account within ten (10) working days of the date on which the Final Approval becomes final and is not subject to further review by appeal or by writ of certiorari, whichever is later. Subject to the requirements of Treasury Debt Collection Authorities, the Settlement Amount shall be deposited as set forth in the preceding paragraph without requirement for further notice to the Class regarding the place or conditions of said deposit, provided said deposit conforms to the terms of this FSA. After the initial deposit of the Settlement Amount, a separate Reserve Account shall be established as set forth in Section VIII.C, below.

C. Interest

Post-judgment interest on the Settlement Amount shall accrue consistent with 25 U.S.C. § 450m-1 and 41 U.S.C. § 7109 from the date final judgment is entered by the District Court

until the dates of any payments, described in Section VII.B. above, by Defendants to the Designated Account.

VIII. DEDUCTIONS FROM AND DISPOSITION OF THE SETTLEMENT AMOUNT

A. Deductions from the Settlement Amount

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

1. Four Million Dollars (\$4,000,000.00) to the Reserve Account as defined and provided for in Section VIII.C; and
2. The amount awarded to Class Counsel for attorneys' fees and costs as provided for in Section IX.

As provided in Section II.N, above, the amount of the Settlement Amount remaining after these deductions is the "Net Settlement Amount."

B. Interest Earned

Interest earned on the investment of the Net Settlement Amount, after deduction of bank, broker, and custodial charges, shall be paid to the Reserve Account, as defined below.

C. The Reserve Account

1. The Amount Distributed to the Reserve Account

Four Million Dollars (\$4,000,000.00) as referred to in Section VIII.A.1, above shall be deducted from the Settlement Amount and shall be placed in a separate account in the Designated Bank using the same collateral security or investment arrangements as apply to the Designated Account for the costs of distributing the Net Settlement Amount to Class Members and as otherwise authorized in this FSA. Unless the United States Department of the Treasury determines otherwise, the Reserve Account may be subject to offset and/or levy pursuant to the

requirements of Treasury Debt Collection Authorities should the debt of a Class Member to the United States exceed that Class Member's share of the Net Settlement Amount. Such offset and/or levy shall be limited to a Class Member's share of the Reserve Account based on that Class Member's Distribution Percentage. All interest that accrues on the Net Settlement Amount shall be paid into the Reserve Account.

2. Timing of Funding of the Reserve Account

The Reserve Account shall be established by Class Counsel and funded within ten (10) working days of the date Defendants make the payment required by Section II.M.

3. Purpose of the Reserve Account

The Reserve Account shall be used for the payment or reimbursement of expenses associated with the implementation of the Distribution Methodology as set forth in Appendix 2 and for the reimbursement of costs of Class Counsel, the Settlement Administrator, the Class Monitor, and the costs identified in Section IX.A in connection with this FSA. Class Counsel may apply periodically to the Court, upon notice to the Defendants, for reimbursement or advance payment of such expenses of Class Counsel, the Settlement Administrator, and/or the Class Monitor, and, upon approval by the Court, they shall be paid from the Reserve Account.

4. Interest Earned

Interest earned on the investment of the Reserve Account, after deduction of bank, broker, and custodial charges, shall be kept in the Reserve Account.

5. Disposition of Reserve Account Balance and Unclaimed Funds

Any amounts remaining in the Reserve Account after distribution is complete shall be paid to Class Members in the same manner as the Net Settlement Amount, except that, should

the amount remaining be too small to justify the expense of distribution, Class Counsel may request approval from the Court to donate the remaining funds to a charitable organization.

6. Sampled Tribal Contractors' Costs and Class Representative Costs

a. As part of the settlement negotiations in this case, certain Tribal Contractors participated in a sampling exercise. Tribal contractors that participated in this exercise shall be eligible to be reimbursed their reasonable out-of-pocket costs incurred in producing documents required for the sampling exercise. Tribal contractors seeking reimbursement of such costs shall submit invoices detailing such costs to Class Counsel within 60 days after Final Approval of this FSA. The Settlement Administrator shall make the final determination on the eligibility and reasonableness of such costs. Such costs shall be paid from the Reserve Account.

b. The Class Representatives shall be eligible to be reimbursed their reasonable out-of-pocket travel and related costs incurred in participating in the litigation and settlement process from the conclusion of PSA III to the present. Class Representatives seeking reimbursement of such costs shall submit invoices detailing such costs to Class Counsel within 60 days after Final Approval of this FSA. The Settlement Administrator shall make the final determination on the eligibility and reasonableness of such costs. Such costs shall be paid from the Reserve Account.

D. Distribution of Net Settlement Amount

1. Class Member Shares

Subject to the requirements of Treasury Debt Collection Authorities, each Class Member shall receive a share of the Net Settlement Amount according to the Distribution Percentage set forth in Appendix 2. Class Members' Distribution Percentages may be subject to adjustment by

agreement of the Parties: (i) pursuant to Section V.E. of the FSA; (ii) if additional Class Members are later identified; and (iii) to correct potential calculation errors. The Named Class Representatives shall, subject to the requirements of Treasury Debt Collection Authorities, receive their share of the Net Settlement Amount according to the procedure and formula set forth in Section VIII.D.2, below.

2. Named Class Representatives' Shares

In recognition of their unique contributions in initiating the claims in this litigation, the Named Class Representatives, for bearing the duties of Class Representative, for their public service in protecting the rights of Tribal Contractors under the ISDA, and for their time and effort over many years in prosecuting this litigation and in participating in negotiations, advising Class Counsel and achieving this FSA, shall have their shares of the Net Settlement Amount (as defined in Section II.N, above) multiplied by a factor of 1.20, after the shares of all Tribal Contractors have been determined by the methodology set out in Section VIII.D.1, above. Thus, when computing each Tribal Contractor's share of the Net Settlement Amount, the shares of the Named Class Representatives shall be multiplied by 1.20 and all shares shall then be adjusted proportionately so that the total shares of all Tribal Contractors equal one hundred percent (100%) of the Net Settlement Amount.

3. Need to Submit a Claim; Disposition of Net Settlement Amount Balance

a. In order for a Class Member to receive payment of its share of the Net Settlement Amount pursuant to the Distribution Percentage, the Class Member shall return a signed copy of the Claim Form provided by the Settlement Administrator. The Court will set the deadline for submission of Claim Forms. Subject to subparagraph (b), if by the end of the Claims Period, any Class Member has not timely submitted a claim form through the Settlement

Administrator, or has disclaimed in writing its share of the Net Settlement Amount pursuant to the Distribution Percentage, that Class Member's share of the Net Settlement Amount shall be reallocated to all other Class Members that have timely submitted claims in proportion to each such Class Member's share of the total Net Settlement Amount, subject to subparagraph (b) below and as set forth in Section VIII.D.1. The failure to submit a claim form shall not affect the release of claims specified in Section IV.A.

b. The portion of any unclaimed amounts exceeding in the aggregate \$10,000,000 shall be paid to the Treasury within 60 days of the end of the Claims Period. For purposes of this subparagraph, unclaimed amounts shall not include amounts disclaimed by a Class Member in writing. The portion of any unclaimed amounts not exceeding in the aggregate \$10,000,000 shall be added to the Reserve Account and shall be administered as specified in Section VIII.C.5.

4. Settlement Administrator

Class Counsel shall, with approval of the Court, engage a Settlement Administrator to manage the allocation and distribution of the Net Settlement Amount. The Settlement Administrator shall review and pay the eligible costs of the sampled Tribal Contractors and Class Representatives as provided in Section VIII.C.6. The Settlement Administrator shall be responsible for completing an individualized copy of the Claim Form attached hereto as Appendix 3 for each Class Member, including identifying the Class Member on each Claim Form and stating on the Form the amount of money each Class Member is entitled to receive from the Net Settlement Amount pursuant to Section VIII.D.1, prior to offsets and/or levies, if any, pursuant to Treasury Debt Collection Authorities. The Settlement Administrator shall also cause the individualized Claim Form to be provided to each Class Member. After the Settlement

Administrator provides the Claim Form to each Class Member, Class Counsel shall notify the Court. Within 30 days of the deadline set by the Court, the Settlement Administrator will provide a copy of all Claim Forms received to Defendants. On receipt of a Claim Form from a Class Member, the Settlement Administrator will pay the Class Member the amount it is entitled to receive from the Net Settlement Amount as defined in Section VIII.D.1, less offsets and/or levies, if any, pursuant to Treasury Debt Collection Authorities. The Settlement Administrator shall also be responsible for calculating and paying to each Class Member that submits a Claim Form additional funds that may be reallocated as provided in Section VIII.D.3 above or may be available in the Reserve Account as provided in Section VIII.C.5 above. The Settlement Administrator shall provide to the Court and Parties periodic reports and a final accounting of the distribution of the Net Settlement Amount, the Reserve Account, and costs incurred by Class Counsel and the Settlement Administrator.

E. Leadership Conflict within a Class Member

Neither the Class, Class Counsel, the Settlement Administrator, the Defendants nor the Class Monitor shall be liable to any person or entity for any distribution of funds made pursuant to this FSA as approved by the Court. In the event Class Counsel or the Settlement Administrator becomes aware that more than one individual or entity claims the right to act on behalf of a Class Member or to receive funds on behalf of that Class Member, then Class Counsel shall file an appropriate action in the nature of an interpleader in the Court to resolve such conflict. The Settlement Administrator shall deposit such Class Member's share of the Net Settlement Amount into the registry of the Court pursuant to Rule 22, Federal Rules of Civil Procedure, provided that in filing any such action Class Counsel shall serve all persons and entities whom Class Counsel or the Settlement Administrator are aware claim an interest in such

Class Member's share. Neither Defendants, the Settlement Administrator nor Class Counsel shall have any affirmative responsibility to make any inquiry with any Class Member concerning the possibility of such conflicts.

F. Class Monitor

Class Counsel shall, with the approval of the Court, appoint an independent certified public accountant as a Class Monitor. The Class Monitor shall report to Class Counsel and Defendants, and shall be charged with the duty to independently review and confirm or correct the work of the Settlement Administrator, including to confirm or correct the accuracy of the Settlement Administrator's individualized Class-Member share calculations before any payments are made to Class Members. The Class Monitor shall also verify that the Claim Form as defined in Section VIII.D.3 submitted by each Class Member was properly filled out and executed, and shall verify that each Class Member that files a Claim Form is paid its Share as defined in Section VIII.D.1 and VIII.C.5. The Class Monitor shall have access to all pertinent records of the Settlement Administrator necessary to perform Class Monitor's functions. All costs for the Class Monitor shall be paid from the Reserve Account.

IX. ATTORNEYS' FEES AND COSTS

A. Allowable Fees and Costs

Subject to the approval of the Court, Class Counsel shall file an application for attorneys' fees of not more than 8.5 percent of the amount(s) paid by the Judgment Fund, and necessary costs incurred, to reflect their reasonable contingent fees in achieving this FSA and for services anticipated to be rendered through the management and distribution of the FSA, exclusive of services agreed to be performed without additional compensation by PSA I, PSA II and PSA III. Defendants agree that an 8.5 percent fee is fair and reasonable and support Class Counsel's fee

application. Allowable costs shall include, but not be limited to: (1) those items identified in Section 10.a. of PSA I; in Section VII.A. of PSA II; in Section VIII.A. of PSA III; and in this Section; and (2) applicable New Mexico state gross receipts tax on attorneys' fees. Attorneys' fees and costs, as approved by the Court, shall be paid from the Settlement Amount. Unless the United States Department of the Treasury determines otherwise, these attorneys' fees and costs may be subject to offset and/or levy pursuant to the requirements of Treasury Debt Collection Authorities should the debt of a Class Member to the United States exceed that Class Member's share of the Net Settlement Amount. Such offset and/or levy shall be limited to a Class Member's share of these attorneys' fees and costs based on that Class Member's Distribution Percentage.

B. Application and Notice

Class Counsel's application must be filed on or before distribution of the Class Notice to the Class. The Notice shall include the percentage amount of the agreed-upon fees to be paid, and the amount of the requested reimbursable costs to be paid as of the date of the filing of the application. Class Counsel's application; objections to the application by Class Members, if any; the Government's response to the fee application, if any; and Class Counsel's reply, if any, shall be considered at the time set by the Court for the Fairness Hearing on this FSA.

C. Proceedings Regarding Attorneys' Fees and Costs.

Except as provided in this Section IX, the substance of Class Counsel's application for attorneys' fees and costs is not part of this FSA, and shall be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of this FSA. Any proceedings related to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this FSA, or otherwise affect the finality of the Court's Final Approval. In

the event that Class Counsel or any timely objector appeal the Court's decision on attorneys' fees and costs, the amount of fees and costs approved by the Court and not in dispute shall be distributed to Class Counsel within ten (10) working days after the date on which Defendants make the first payment of the Settlement Amount to the Designated Account. The portion of fees requested by Class Counsel that are not approved by the Court and that are subject to an appeal by Class Counsel, or the portion of fees requested and approved by the Court which are subject to an appeal by a timely and qualified objector, shall, within ten (10) working days after the date on which Defendants make the first payment of the Settlement Amount to the Designated Account following the Final Approval, be placed in a segregated account in the Designated Bank using the same collateral security or investment arrangements as apply to the Designated Account until such appeal is resolved, and such funds shall then be distributed in accordance with the decision of the Court. Any such appeal shall not delay the distribution of the undisputed Net Settlement Amount to the Class Members. In the event that any appeal challenging fees also challenges the overall validity of the FSA, the provisions in Section VI shall apply.

D. Timing of Payment of Attorneys' Fees and Costs

Subject to Section IX.A, the amounts awarded for costs and attorneys' fees shall be paid from the Designated Account within fourteen (14) days of when the Judgment Fund payment(s) required to cover those costs and fees are paid to the Designated Account. The Court shall reserve from the approved attorneys' fee award no more than ten percent (10%) of the total fee award to assure that Class Counsel shall responsibly oversee the administration of the Net Settlement Amount. Upon completion of their duties and application by Class Counsel, the

Court shall by Order declare that Class Counsel's duties have ended and pay to Class Counsel any amount of the total attorneys' fee award which has been reserved.

E. Stipulations as to Attorneys' Fees and Costs

The award of attorneys' fees and costs shall be in lieu of any request, application, or award of attorneys' fees or costs against the Defendants under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other authority. The award of attorneys' fees shall be for services of Class Counsel rendered to date with respect to all of the Settled Claims, and for services to be rendered in connection with the distribution of the Net Settlement Amount. All rights to any alternative bases for recovering fees and costs are hereby waived. Nothing in this FSA is intended to preclude or to constitute a waiver of rights by Class Counsel for attorneys' fees or costs for services performed or costs incurred on any of the Reserved Claims. Nothing in this FSA shall be construed to, or is intended to, compensate or reimburse, or to bar compensation, reimbursement or application for, attorneys' fees and costs by Class Counsel for services they perform in any other case or proceeding.

X. RIGHT TO CHALLENGE BREACHES OF THIS FSA

A. Written Notice on the Other Party

1. Before seeking adjudication of any allegation or complaint that Defendants have failed to comply with any provision of this FSA, Class Counsel shall serve a written notice upon the Director of the Federal Programs Branch, Civil Division, United States Department of Justice, and the Solicitor of the Department of the Interior. Such notice shall specify which term(s) of this FSA allegedly has (have) been violated, shall describe all the facts and circumstances then known supporting the claim that Defendants have violated the FSA, and

shall state that Plaintiffs intend to seek an Order from the District Court to enforce compliance with this FSA.

2. If any Class Member or if Defendants, through counsel, allege that Class Counsel, the Settlement Administrator, and/or the Class Monitor has failed to comply with any provision of this FSA, such Class Member or counsel for Defendants shall serve a written notice upon Class Counsel. Such notice shall specify which term(s) of this FSA allegedly has (have) been violated, shall describe all the facts and circumstances then known to the Class Member or Defendants supporting the claim that Class Counsel, the Settlement Administrator, and/or the Class Monitor has (have) violated this FSA, and shall state that the Class Member or Defendants intend to seek an Order from the District Court to enforce compliance with this FSA.

B. Sixty-Day Meet and Confer Period

Class Counsel and Defendants shall have a period of sixty days after receipt of the notice described in Section X.A, above, to take appropriate action to resolve any claims of noncompliance. If such claims are not resolved after consultation within that sixty-day period, or if, prior to the expiration of such sixty-day period, Class Counsel or Defendants notify Class Counsel, Defendants, and/or Class Members that no further action will be taken, then Class Counsel, the Class Member, and/or Defendants may apply to the District Court for an Order compelling compliance with this FSA.

C. Not Initially Enforceable Through Contempt

The Parties hereby waive and disclaim any initial right to seek enforcement of this FSA through contempt sanctions. However, if after a Party seeks an Order compelling compliance with this FSA, the Court issues such Order, any future violation of any such Order may give rise to contempt sanctions as in any other case, as may otherwise be found warranted by the Court.

XI. CONCLUSION OF CLASS COUNSEL'S DUTIES AND OF THIS CLASS ACTION

A. Class Counsel's duties and this Class Action shall terminate once all settlement funds have been distributed and a final accounting has been furnished to and approved by the Court.

B. No additional fees beyond those awarded under this FSA shall be paid to Class Counsel for post-settlement services. Class Counsel may recover from the Reserve Account their additional out-of-pocket costs incurred in excess of those costs reimbursed pursuant to Section VIII.C.3 of this FSA, including such other experts as may be necessary to implement this FSA, all upon proper application to and approval by the Court.

XII. JURISDICTION OF THE COURT TO ENFORCE THIS FSA

The Parties hereby stipulate and agree to entry of a Final Judgment dismissing all of Plaintiffs' claims in this action with prejudice, except that the Court shall retain limited jurisdiction for the sole purpose of enforcing compliance with the terms and conditions of this FSA. The parties agree that any Order of the Court granting judicial approval of this FSA does not render the terms and conditions of this FSA subject to the contempt powers of the Court except as set forth in Section X.C. However, this provision shall not be construed to limit the power of the Court to enforce the terms of this FSA through a separate Order that may be issued by the Court after the conditions set forth in Sections X.A and X.B have been satisfied. Applications for Orders seeking to enforce this FSA may be brought by Class Counsel, Defendants' counsel or by any Class Member.

XIII. INTERPRETATION

Nothing contained in this FSA shall be deemed to be an approval or adoption by any Party of any Party's rationale or justification for entering into this FSA. This FSA shall be

deemed to have been drafted jointly by the Parties, and no alleged ambiguity shall be construed against any Party as the drafter.

XIV. PARTIES BOUND BY THIS FSA

This FSA binds each and every Defendant as defined in Section II.A.2, above. This FSA also binds the Class, including each of the Named Plaintiffs and each and every Class Member. This FSA shall be binding upon and inure to the benefit of the Parties and their respective predecessors, successors, agents, and assigns.

XV. INTEGRATION

This FSA is the integrated understanding of the Parties and replaces and supersedes any prior agreement, understanding, or contract between them regarding settlement of this dispute, except that PSA I, PSA II, and PSA III shall remain in full force and effect.

The terms of this FSA shall constitute the entire settlement agreement between the Parties regarding both the final disposition of the claims and the Parties' respective rights and obligations under the Agreement. Any prior oral or written statement, representation, agreement, or understanding that is not expressly contained herein, shall have no force or effect whatsoever.

XVI. COOPERATION

The Parties agree to exchange information and to prepare and execute such instruments as may reasonably be necessary to effectuate this FSA.

XVII. MODIFICATION

This FSA may be modified only with the written approval of Class Counsel (acting on behalf of the Class and the Named Class Representatives), and Defendants and with the approval of the Court, upon such notice to the Class, if any, as the Court may require.

XVIII. COUNTERPARTS

This FSA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same FSA. A facsimile or other duplicate of a signature shall constitute an acceptable, binding signature for purposes of this FSA.

XIX. PROTECTIVE ORDER

The Parties, their retained experts, their attorneys and persons regularly in the employ of such attorneys who have a need for the information in the performance of their duties will continue to be bound, and the Settlement Administrator and Class Monitor will agree to be bound, by the terms of the Protective Order entered by the Court on April 9, 2013. The Parties agree that the Protective Order will continue to govern the use of any materials, including documents and information that have been or may hereafter be provided to Class Counsel by Defendants for purposes related to this Settlement Agreement. Class Counsel will be responsible for advising their experts, the Settlement Administrator and Class Monitor, and any other individuals acting for, on behalf of, or at the request or direction of Class Counsel, of the provisions of the Protective Order and will require that each such individual sign the Acknowledgment of Protective Order, attached as Exhibit A to the Order of April 9, 2013, and return the Acknowledgment to Defendants.

XX. TAX LAWS

Nothing in this FSA shall be construed as amending or altering the application, if any, of any tax law to any entity concerning any funds, including any funds paid or distributed pursuant to this FSA.

XXI. OTHER FEDERAL CLAIMS

Nothing in this FSA shall be construed to alter or impair the right of any federal agency to pursue any claim not released in this FSA against any entity under any applicable law.

Nothing in this FSA shall be construed to alter or impair the right of any Class Member to pursue any claim against the United States or any federal agency or official not released in the FSA under any applicable law.

XXII. NOTICES

Notices required under this FSA shall be sent to:

A. Counsel for Plaintiffs

Class Counsel:
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460 St. Michael's Drive, Suite 401
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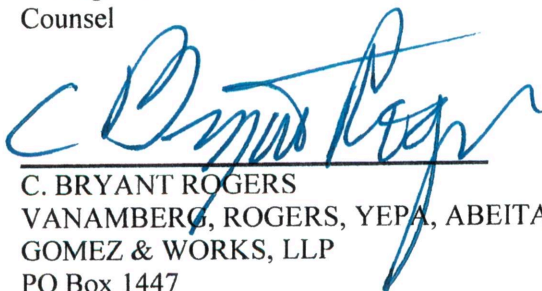
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By their signatures below the Parties, by and through counsel, indicate their consent to the terms and conditions set forth above.

Respectfully Submitted,



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Counsel



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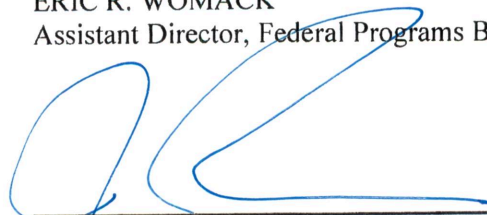


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Counsel for Defendants

Dated: September 16, 2015

Ramah Navajo Chapter, et al., v. Jewell, No. 90-cv-957 (D.N.M.)
Final Settlement Agreement
Appendix 1 – Class Notice

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. 1:90-CV-957-JAP/KBM

SALLY JEWELL, Secretary of the
Interior, *et al.*,

Defendants.

[DRAFT] NOTICE OF FINAL SETTLEMENT

TO ALL MEMBERS OF THE RAMAH CLASS:

PLEASE READ THIS NOTICE CAREFULLY.

**IT CONTAINS IMPORTANT INFORMATION ABOUT A
PROPOSED FINAL SETTLEMENT AGREEMENT IN THE ABOVE-
REFERENCED CASE.**

**THIS NOTICE DOES NOT CONTAIN
ALL TERMS AND CONDITIONS OF THE PROPOSED
FINAL SETTLEMENT AGREEMENT.**

**THE COMPLETE AGREEMENT, INCLUDING ITS APPENDICES,
THE JOINT MOTION FOR PRELIMINARY AND FINAL
APPROVAL OF THAT AGREEMENT, AND THE APPLICATION
FOR ATTORNEYS' FEES AND COSTS MAY BE FOUND AT:**

<WWW.RNCSETTLEMENT.COM>.

QUESTIONS MAY BE ADDRESSED TO CLASS COUNSEL.

The parties have agreed to a proposed Final Settlement Agreement (FSA), which requires Defendants to pay Nine Hundred Forty Million Dollars (\$940,000,000) to settle the remaining claims in this lawsuit. This payment will come from the Judgment Fund established by 31 U.S.C. § 1304, as occurred in the prior partial settlements in this case. The settled claims are for alleged under-payments of contract support costs by the Bureau of Indian Affairs (BIA) and/or the Office of Self Governance (OSG) under the Indian Self-Determination and Education Assistance Act (ISDA) during fiscal years 1994 through 2013. During these years, Congress “capped” how much of the BIA’s appropriations could be used to pay contract support costs. Your Tribe or tribal organization may be a Class Member eligible to share in this settlement. The settlement is not final until approved by the Court.

BACKGROUND

In 1990, the Ramah Navajo Chapter brought suit against the Government in the United States District Court of the District of New Mexico claiming that the Department of the Interior (DOI) improperly calculated indirect cost rates for ISDA contractors. In 1993, the District Court certified a class of all Tribes and tribal organizations that have BIA ISDA contracts or compacts. In 1999 the parties entered into the First

Partial Settlement Agreement to resolve plaintiffs’ “rate claim” for fiscal years 1989-1993, and the government agreed to pay \$76,200,000 to approximately 320 Tribes and Tribal Organizations. *See Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091 (D.N.M. 1999).

In 1999, the Oglala Sioux Tribe intervened to assert a “shortfall claim,” alleging that the BIA had failed to pay tribal contractors their full amount of indirect contract support costs. The Pueblo of Zuni also intervened to assert a shortfall claim and a “direct contract support cost claim,” alleging that the BIA failed to pay tribal contractors their direct contract support costs. After notice to the Class, the two additional claims were incorporated into the class action.

In 2002, the parties entered into the Second Partial Settlement Agreement to resolve plaintiffs’ shortfall claims for fiscal years 1989–1993 and direct contract support cost claims for fiscal years 1989–1994, and the government agreed to pay \$29,000,000 to approximately 224 Class Members. *See Ramah Navajo Chapter v. Norton*, 250 F. Supp. 2d 1303 (D.N.M. 2002).

In 2008, the parties entered into the Third Partial Settlement Agreement to reform the indirect cost rate system for tribal contractors

operating ISDA programs. *See* Third Partial Settlement Agreement, ECF No. 1138 (Aug. 27, 2008).

In 2012, the Supreme Court ruled that the plaintiffs' claims were not barred by the government's appropriations law defense. *See Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012).

Although the Supreme Court upheld the plaintiffs' right to full payment of contract support costs, the amount of those unpaid costs was contested for those years that had not yet been settled. The parties engaged in settlement negotiations and retained auditing and statistical experts to assist them with valuing plaintiffs' claims in the course of these negotiations. Class counsel retained REDW, LLC, of Albuquerque, New Mexico. REDW is a certified public accountant and consulting firm that performs and has performed accounting work for tribes and tribal contractors. These include audit and attest services as defined by the American Institute of Certified Public Accountants. REDW assisted Class Counsel with the administration of the First and Second Partial Settlement Agreements. More information about REDW's clients can be found on its website: www.redw.com/home. Class counsel also retained Michael Larson, Ph.D., a professor of statistics at George Washington University. The government retained Cotton & Company of Alexandria, Virginia, an audit

and accounting firm, and Eugene Ericksen, an emeritus professor at Temple University. The named Class representatives also participated in the settlement negotiations. Final negotiations were assisted by the active participation of U.S. Magistrate Judge Karen B. Molzen. The parties have agreed upon the proposed Final Settlement Agreement now pending before the Court.

The protracted and intensive settlement negotiations showed that the parties are far apart on many factual, legal and accounting issues materially affecting the calculation of the total amount of unpaid contract support costs from FY 1994 through FY 2013, and the resulting damages. If the case were not settled, the resolution of these issues would likely require litigation lasting many more years.

SUMMARY OF SETTLEMENT TERMS

Under Rule 23 of the Federal Rules of Civil Procedure, the Court advises you as follows:

1. The above-captioned Class Action is pending in this Court. For purposes of this final settlement, the Class consists of those Indian tribes and organizations that have entered into contracts with BIA or self-governance funding agreements with OSG under the Indian Self-Determination Act, Pub. L. 93-638, as amended, at any time between FY 1994 and FY 2013.

2. Upon payment by the Defendants of the settlement amount of NINE HUNDRED FORTY MILLION DOLLARS (\$940,000,000), the Plaintiffs through their legal counsel will fully release the Defendants from all claims as to under-payment of contract support costs, both indirect and direct, for FY 1994 through FY 2013, except for certain individual Class Member claims preserved in the agreement.

3. Each eligible Class Member will be entitled to share in the net settlement amount—the amount remaining after the deduction of (1) attorneys' fees and costs; and (2) funds for a reserve account to cover (a) the costs of distributing the settlement, (b) the costs of reimbursing certain costs incurred by the named Class Representatives, and (c) the costs of reimbursing certain Class Members that contributed documents for the sampling that was done as part of the statistical and accounting analyses that led to the settlement.

4. The parties have agreed that the speediest, least expensive, fairest, and most accurate method for distributing the net settlement amount to each eligible Class Member is to use the statistical and accounting analyses which helped the parties negotiate the settlement amount. Those analyses disclosed that the amount of contract support costs paid to each Class Member closely correlates with its unpaid contract support costs.

Using that correlation, each eligible Class Member's share will be determined by a ratio between (a) the amount of contract support costs that allegedly should have been paid as determined by the parties' negotiations based on the data collected from the sample, and (b) the contract support costs paid to each Class Member during the settlement years. Each Class Member with a BIA ISDA contract or OSG self-governance funding agreement in a given year will receive a minimum of approximately \$8,000 for that year. The shares of the named Class Representatives will be enhanced by twenty percent (20%) in recognition of their contributions in achieving this settlement. Additional information about the methodology used for distributing the net settlement amount to each eligible Class Member is more fully explained in the Final Settlement Agreement and its accompanying appendices, which can be found at: www.rncsettlement.com.

5. To be eligible for a share in this settlement, a Class Member must have entered into a contract with the BIA or self-governance funding agreement with OSG under the ISDA during any of the years FY 1994 through FY 2013 and must file a claim on a form to be provided by the Settlement Administrator. Each form sent to a Class Member will set forth the amount of money that the Class Member is entitled to receive from the net settlement amount. Each Class Member's share of the net settlement

amount will be determined according to the methodology and distribution percentages as defined in the Final Settlement Agreement and set out in the Distribution Appendix that is attached to the Final Settlement Agreement. If by the end of the Claims Period, any Class Member has not timely submitted a claim form through the Settlement Administrator, or has disclaimed in writing its share of the Net Settlement Amount pursuant to the distribution percentages set forth in the Distribution Appendix, that Class Member's share of the Net Settlement Amount shall be reallocated to all other Class Members that have timely submitted claims in proportion to each such Class Member's share of the total net settlement amount; provided, however, that unclaimed (but not disclaimed) amounts exceeding in the aggregate ten million dollars \$10,000,000 will be repaid to the United States Treasury.

6. Amounts remaining in the reserve account after the costs of the initial distribution have been paid will be distributed to the Class Members according to the same percentages used in the initial distribution, unless the amounts remaining are insufficient to justify the costs of a second distribution. In that case, the Court will determine the disposition of the remaining funds.

7. A Settlement Administrator will be approved by the Court upon motion by Class Counsel. The Settlement Administrator has not yet been selected.

8. As part of the settlement negotiations in this case, certain Class Members participated in a sampling exercise. Class Members that participated in this exercise are eligible to be reimbursed their reasonable out-of-pocket costs incurred in producing documents required for the sampling exercise. Class Members seeking reimbursement of such costs should submit invoices detailing such costs to Class Counsel within 60 days after final approval of this settlement. The Settlement Administrator will make the final determination on the eligibility and reasonableness of such costs. Such costs will be paid from the reserve account.

9. A Class Monitor will be approved by the Court upon motion by Class Counsel. Class Counsel is proposing to appoint Moss Adams, LLP as the Class Monitor. Moss Adams is a certified public accountant and consulting firm that performs and has performed accounting work for approximately 224 out of 645 Class Members. This includes audit, attest and assurance services as defined by the American Institute of Certified Public Accountants. More information about Moss Adams and the steps it will put in place to avoid the appearance of any potential conflicts arising

from its audit, attest and assurance service performed for certain Class Members can be found at: [\[link\]](#). The Class Monitor will assist Class Counsel in overseeing the distribution of the settlement amount by reviewing the work performed by the Settlement Administrator.

10. Class Counsel have applied to the Court for an award of attorneys' fees of eight and one-half percent (8.5%) of the settlement amount. The Government agrees that an eight and one-half percent (8.5%) fee is fair and reasonable and supports the application for attorneys' fees. Class Counsel have also applied for reimbursement of estimated costs to date of \$_____. The estimated costs include applicable New Mexico gross receipts tax on the attorneys' fees.

11. This Class consists of all Indian Tribes and tribal organizations that have entered into BIA ISDA contracts, including those Tribes which at one time requested exclusion from the Class but were thereafter permitted to re-enter the Class by Court Orders dated September 22, 1998, December 3, 1998, December 8, 1998, and August 1, 2000. Additional opportunities to request exclusion were afforded to all Class Members by Court Orders dated September 30, 1999, and March 27, 2002. No Member of the Class requested exclusion. However, some members have entered the Class since March 27, 2002. Those Class Members that did not have ISDA contracts

with BIA or self-governance funding agreements prior to March 27, 2002, were not class members when the earlier Notices issued. Those Class Members may request exclusion from the Class by notifying the Court on or before _____, and if a Class Member is excluded, that Class Member's share of the Settlement Amount will be retained by the Government and the Settlement Amount will be reduced accordingly. In such event the Distribution Percentages for each remaining Class Member will be adjusted accordingly to remove the share previously allocated to the excluded Class Member.

Your tribal entity has been identified as a[n Existing/New] Class Member and therefore [may/may not] submit a request to be excluded from the Class.

OBJECTIONS

Any Class Member that wishes to object to the proposed settlement or fee application must file a Notice of Intention to Appear and Object (Objection) with the Clerk of the Court and deliver it to all listed Counsel no later than _____, __, 2015, and must appear at the fairness hearing described in this Notice. If more than one Class Member makes the same objection, the Court may designate one of them to present the objection at the hearing. Objections must be sent to the Clerk of Court, 333 Lomas, NW, #270,

Albuquerque, New Mexico 87102. Each Objection must include (i) a reference to the case number, “No. 90-CV-0957;” (ii) a statement of each reason for the Objection; (iii) the specific ground(s), if any, for each reason, including any legal support, evidence, papers or briefs the Class Member wishes the Court to consider; (iv) the person or persons who will present the Objection at the hearing; and (v) the signature of the responsible official or attorney for the Class Member making the Objection.

Objections must also be sent to the following attorneys:

Michael P. Gross
Lead Class Counsel
M. P. GROSS LAW FIRM, P.C.
460 St. Michael’s Drive, Suite 401
Santa Fe, New Mexico 87505-7602
Telephone: (505) 983-6686
Fax: (505) 989-1096
E-mail: mike@mpgrosslaw.com

C. Bryant Rogers
Co-Class Counsel:
VANAMBERG, ROGERS, YEPA,
ABEITA & WORKS, LLP
P. O. Box 1447
Santa Fe, New Mexico 87504-1447
Telephone: (505) 988-8979
Fax: (505) 983-7508
E-mail: cbrogers@nmlawgroup.com

Lloyd B. Miller
Co-Class Counsel
SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON, LLP
900 West Fifth Avenue, Suite 700
Anchorage, Alaska 99501

James D. Todd, Jr.
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UNITED STATES DEPARTMENT
OF JUSTICE, CIVIL DIVISION
Federal Programs Branch
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Telephone: (202) 514-3378
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Telephone: (907) 258-6377

Fax: (907) 272-8332

E-mail: Lloyd@sonosky.net

The Court will conduct a hearing at the Federal District Courthouse, 333 Lomas NW, Albuquerque, New Mexico 87102 at __:___.m. on [January 26, 2016], at which time the Court will hear Objections, if any, to the settlement and fee application and thereafter render a ruling approving or declining to approve the settlement, and acting upon the fee application. Persons intending to appear at or attend the hearing are advised to so inform the Court and to reconfirm the date, time and place of the hearing by contacting the Clerk of Court before traveling to Albuquerque.

DEADLINES

The Court and counsel must receive any Objections or other motions or applications for relief no later than [November 19, 2015], 45 days after the dissemination of this Notice.

APART FROM FILING OBJECTIONS, PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE ON ANY SUBSTANTIVE MATTER DEALING WITH THIS NOTICE EXCEPT TO CONFIRM THE DATE OF THE FAIRNESS HEARING.

Ramah Navajo Chapter, et al., v. Jewell, No. 90-cv-957 (D.N.M.)
Final Settlement Agreement
Appendix 2 - Distribution Percentages for Each Class Member

This appendix describes the methodology for allocating shares of the Net Settlement Amount to each Class Member.¹

The allocation described herein was developed by Dr. Eugene Ericksen, a Special Consultant to NERA Economic Consulting and an Emeritus Professor of Sociology and Statistics at Temple University, and Dr. Michael Larsen, an Associate Professor of Statistics at George Washington University. Professor Ericksen was retained by the Department of Justice, and Professor Larsen was retained by Class Counsel.²

¹ The Net Settlement Amount is defined in § II.N of the Final Settlement Agreement (“FSA”) as “the amount available for Distribution to Tribal Contractors after the Reserve Account and attorneys’ fees, costs, and other expenses have been deducted from the ‘Settlement Amount’” The Settlement Amount is defined in § II.M of the FSA as “\$940,000,000.00, plus post judgment interest” As explained below, for purposes of this Appendix it is assumed that the Net Settlement Amount will be \$854,600,000.

² Eugene Ericksen and Michael Larsen are professors of statistics who specialize in the design and construction of statistical samples. Each has published scientific papers in the area of sampling, taught graduate level courses in statistical sampling, and designed and constructed many actual samples in applied settings.

Professor Ericksen has been an associate editor of the *Journal of the American Statistical Association*, and in 1991 he was elected to be a Fellow of the American Statistical Association. He was appointed by then-Secretary of Commerce, Robert Mosbacher, to advise him on whether or not to adjust the results of the 1990 Census for the disproportionate undercount of racial minorities. In April 1997 he published an article, “Problems in Sampling the Native American and Alaska Native Populations” that grew out of his work on a panel of the National Academy of Sciences on that subject.

Professor Larsen served as the Executive Editor of *Chance* magazine from 2008 to 2010, and he currently serves as an associate editor for three different journals. He served on a National Academies of Sciences Panel on the 2010 Census and Steering Committee for a Workshop on surveying nonprofit organizations about research and development. He is currently a member of the standing committee for reengineering the decennial census. In 2010 he was elected to be a member of the International Statistical Institute. In 2012 he was elected to be a Fellow of the American Statistical Association (ASA) and currently serves on the ASA Fellows committee. He was elected Chair-Elect for the ASA Survey Research Methods Section for 2015 and President-Elect for the Washington Statistical Society for 2015-16. In 2009, he co-authored a published article entitled “Research Synthesis: Research Strategies for Surveys of American Indians.”

The parties' goal is to allocate the Net Settlement Amount based on the amount of Contract Support Costs ("CSC") that was paid to each Class Member during the period 1994 through 2013 (the years covered by the settlement). The allocation plan also addresses years in which Class Members had Indian Self-Determination Act ("ISDA") contracts³ but received little or no contract support costs according to the BIA database of CSC payments. In recognition of their substantial contributions over the years to the prosecution of the action and the negotiation of this settlement, the allocation also awards each Named Class Representative an incentive payment of a twenty percent (20%) increase in its Distribution Percentage.

The table in § 6 of this Appendix sets forth the Distribution Percentages as defined in § II.R. of the Final Settlement Agreement. These Distribution Percentages will be used to allocate shares of the Net Settlement Amount to Class Members. That table does not provide dollar amounts that will be paid to each Class Member. This is because the actual Net Settlement Amount will not be known until the Court rules on Class Counsel's cost reimbursement request and fee application, and until the Court approves or modifies the parties' proposal that a \$4 million Reserve Account be established. For purposes of this Appendix, the parties' statisticians have assumed that the Court will approve Class Counsel's fee application (seeking a fee of 8.5% of the Settlement Amount) and request for reimbursement of \$1.5 million in costs, and that the Court will also approve the parties' request to establish a Reserve Account of \$4 million to cover future costs of implementing the settlement. These assumptions produce an *estimated* Net Settlement Amount of \$854,600,000.00, and the Class Member share percentages set forth in § 6 of this Appendix are based on these same assumptions.

1. Sources of Information

The parties used two sources of data to develop and implement their allocation plan: (i) the BIA payment database, which contained records of payments made to each Class Member from 1994 through 2012; and (ii) for 2013, BIA's 2013 Shortfall Report ("SFR"). The parties also used these two data sources to determine the years in which each Class Member had an ISDA contract, and the amounts of CSC paid to each Class Member each year.

BIA records show that 645 separate tribal entities had ISDA contracts at some time during the period 1994 through 2013. The statisticians identified a population of 9,409 "CSC years," *i.e.*, the total number of years in which Class Members received CSC payments.

The data showed that not every Class Member had an ISDA contract in every year between 1994 and 2013. Additionally, the parties determined that the average amount of the CSC underpayment was different each year. For this reason, the parties' statisticians determined that it would be efficient to take a sample of all of the Class Members by each

³ "Contracts" as used in this Appendix also includes ISDA self-governance funding agreements.

fiscal year, and then determined that they could use data derived from the sample to allocate the Net Settlement Amount across each of the 20 years at issue.

2. The Basis for Allocating the Net Settlement Amount

The parties' statisticians used statistical sampling as the basis for determining how much of the Net Settlement Amount to allocate to each fiscal year. The statisticians randomly selected Class Members for each year from 1994 through 2012, and the parties' accountants examined each contractor's contract documents from the sampled year to determine the sampled contractor's CSC underpayment for that year.

The parties relied on three important factors in developing their sampling plan and distribution plan. First, BIA has databases that show the amount of CSC paid to all Class Members in all years at issue, so the parties agreed to select samples from the BIA database. Second, amounts appropriated for CSC and the percent of CSC paid varied by year, so the statisticians stratified the sample selection by year to account for these differences. Third, the size of payments to Class Members each year ranged from hundreds of dollars to millions of dollars, so the statisticians used probability proportional to size sampling to account for these differences in size.⁴ This information produced a sampling frame from which the parties' statisticians selected a sample.

The statisticians used the smallest sample sizes that would still produce reliable estimates. The statisticians selected a sample of 108 selections over the 1994–2012 time period. Each party then retained expert certified public accounting firms experienced in government contracting matters to conduct an independent forensic evaluation to determine the amount of CSC that should have been paid to each sampled Class Member in that sampled year.⁵

The accountants then compared the amount of CSC that should have been paid to the amount of CSC that was actually paid to produce a "CSC ratio" for each sampled Class Member in that year. Because the government's accountants and Class Counsel's accountants worked independently and reached different conclusions about the size of the underpayments, the ratios they developed for each sampled Class Member differed, although typically not by large amounts. The parties' statisticians then calculated the

⁴ The statisticians used both stratification and probability proportional to size sampling (PPS), described in standard textbooks on survey sampling. Stratified sampling divides the population into groups called strata and then samples independently within strata. PPS sampling weights each entity in the population by size, thus increasing the probability that larger entities will be selected. In this case, the statisticians used the years in the BIA database to define strata and assigned a weight to each Class Member within each year based on the size of the CSC payment reported in the payment database. CSC payment information for the 2013 year was not available when the parties' statisticians selected the sample.

⁵ The Class retained REDW, LLC, of Albuquerque, New Mexico. Defendants retained Cotton & Co. LLP, of Alexandria, Virginia.

Distribution Percentages set out in § 6 of this appendix using the methods described below.

3. Allocating the Net Settlement Amount for Each Fiscal Year

The parties' statisticians averaged the accountants' CSC ratios for each sampled Class Member in the sampled year and then, for each sampled year, averaged the CSC ratios of all Class Members sampled in that year to produce a CSC ratio for each year from 1994 through 2012. The parties' statisticians then conducted a series of analyses and determined that, because the sample sizes for any given year were small, it was best to "smooth" the CSC ratios as follows:

- For the years 1996–2010, the statisticians calculated a 5-year average for each year, which included the year itself, each of the two preceding years, and each of the two succeeding years. For example, for the year 2000 they calculated the average of the yearly ratios for 1998, 1999, 2000, 2001 and 2002.
- For the years 1995 and 2011, the statisticians calculated a 3-year average, which included the year itself, the one preceding year, and the one succeeding year.
- For the year 1994, the statisticians calculated a 3-year average with 50 percent of the weight assigned to the 1994 ratio and 25 percent assigned to each of the 1995 and 1996 ratios.
- For the year 2012, the statisticians calculated a 3-year average with 50 percent of the weight assigned to the 2012 ratio and 25 percent assigned to each of the 2010 and 2011 ratios.
- Because the parties were unable to select a sample for 2013, the statisticians applied the weighted average for 2012 to the 2013 data.

The parties' statisticians then calculated an initial amount of the settlement to be allocated to each year.

4. Allocating the Share of the Net Settlement Amount to Each Class Member

The parties used a three-step process to allocate a share of the Net Settlement Amount to each Class Member.

Step 1: Allocation of Net Settlement Amount to Class Members

The first step applied the smoothed CSC ratio for each year from 1994 through 2013 to the amounts paid to each Class Member that had an ISDA contract in a given year. To illustrate, suppose that a hypothetical Class Member received CSC payments for only three years: 2004, 2005, and 2006. Suppose that this hypothetical Class Member was paid \$100,000 for CSC in 2004, \$200,000 in 2005, and \$250,000 in 2006. The parties' statisticians determined that the smoothed CSC ratios for the three years are 1.55,

1.52 and 1.36. The initial estimate of the CSC that should have been paid to this hypothetical entity would therefore be $(\$100,000 \times 1.55)$ for 2004 + $(\$200,000 \times 1.52)$ for 2005 + $(\$250,000 \times 1.36)$ for 2006, or \$799,000 for all three years. Subtracting the \$550,000 for CSC already paid, the potential distribution to this hypothetical Class Member would be \$249,000. The parties' statisticians made similar calculations for all 645 Class Members.

Step 2: Incentive Payments to Class Representatives

The second step accounted for the incentive payments that may be awarded to the Named Class Representatives: the Ramah Navajo Chapter, the Oglala Sioux Tribe, and the Pueblo of Zuni. The parties agreed that as compensation for their services, these Class Representatives' shares of the Net Settlement Amount would be multiplied by a factor of 1.20. The parties' statisticians adjusted the initial distribution amounts of all Class Members to reflect these incentive payments to the Named Class Representatives.

Step 3: Minimum Payment to Each Class Member for Each Year It Had an ISDA Contract

The third step provides a minimum payment of approximately \$8,000 for each year where a Class Member had an ISDA contract. The parties noted that, according to the BIA payment database, there were many years when a Class Member had an ISDA contract for which it should have received CSC payments, but in fact received disproportionately small or even no CSC payments. The parties were concerned that certain small tribes and tribal contractors (especially in rural Alaska, but also elsewhere) may have been disproportionately underpaid for CSC, and would have resulted in lower or zero allocations of the NSA in Step 1, above. To address this phenomenon, the parties agreed to establish a minimum distribution amount of approximately \$8,000 for each year that a Class Member had an ISDA contract. For example, an entity with 20 years of ISDA contracts would receive a minimum total payment of approximately \$160,000, and an entity with 5 years of ISDA contracts would receive a minimum total payment of approximately \$40,000.

The parties' accountants and statisticians identified approximately 454 Class Members that, absent application of the \$8,000 threshold amount, would otherwise receive a distribution amount of less than \$8,000 for at least one of the years in which the Class Member had an ISDA contract. Overall, there are a total of 2,730 CSC years in which a Class Member had an ISDA contract but would have received a distribution amount of less than \$8,000, but for this Step 3 adjustment. Increasing these minimum distributions up to \$8,000 for each year a Class Member had an ISDA contract will allocate an additional amount of approximately \$13,108,461 out of the estimated \$854,600,000 Net Settlement Amount to these 454 Class Members (or roughly 1.5% [one and one-half percent] of the Net Settlement Amount).

To account for this \$13,108,461 reallocation, the parties' statisticians adjusted the Class Members' distribution amounts for each year that a Class Member was unaffected by the \$8,000 minimum distribution. They did this by multiplying the initial distribution

amount by 0.985. The parties' statisticians then adjusted the initial distribution percentage for each Class Member accordingly to produce the final distribution percentage. In the hypothetical in paragraph 4.a, above, this adjustment would reduce that hypothetical Class Member's share from \$249,000 to \$245,265. After completing these additional steps, the statisticians then calculated a final distribution percentage for this hypothetical Class member of 0.02870 percent. The final distribution percentage for each Class Member is shown in the tables in Section 6, subject to the potential adjustments set out in Section VIII.D.1 of the FSA.

5. Final Share of the Net Settlement Amount by Year

After completing each of these three steps, the parties recalculated the allocation of the Net Settlement Amount among the 20 years at issue in the settlement according to the following percentages:

Share of Net Settlement Amount By Year

Year	Percent
(a)	(b)
1994	5.3%
1995	6.5%
1996	6.2%
1997	4.9%
1998	5.7%
1999	4.3%
2000	4.2%
2001	5.3%
2002	7.0%
2003	7.6%
2004	8.6%
2005	8.0%
2006	5.5%
2007	6.0%
2008	5.2%
2009	3.2%
2010	2.1%
2011	1.3%
2012	1.5%
2013	1.5%
Total	100.0%

6. Final Distribution Percentages

The Final Distribution Percentages are presented in two tables. The first table provides the Class Member Distribution Percentages for Class Members that have previously been given an opportunity to request exclusion from the Class. The second table provides the Class Member Distribution Percentage for Class Members that have not previously been given an opportunity to request exclusion from the Class.

Table 1. Class Members That Have Previously Been Given an Opportunity to Request Exclusion from the Class

Class Member Name	Class Member Distribution Percentage
1854 AUTHORITY	0.15481%
ABSENTEE SHAWNEE	0.23660%
AGDAAGUX TRIBAL COUNCIL	0.03601%
AGUA CALIENTE BAND OF CAHUILLA	0.00736%
AK-CHIN INDIAN COMMUNITY	0.05627%
AKIACHAK NATIVE COMMUNITY	0.02975%
AKIAK NATIVE COMMUNITY	0.07302%
ALABAMA COUSHATTA INDIAN RESERVATION	0.22962%
ALABAMA-QUASSARTE TRIBAL TOWNSHIP	0.08639%
ALAKANUK TRADITIONAL COUNCIL	0.00187%
ALAMO NAVAJO SCHOOL BOARD	0.01872%
ALEUTIAN PRIBILOF ISLANDS ASSOCIATION	0.47975%
ALGAACIQ TRIBAL GOVERNMENT	0.00187%
ALL INDIAN PUEBLO COUNCIL INC	0.00947%
AMERICAN INDIAN SERVICES INC	0.00281%
ANNETTE ISLAND SCHOOL DISTRICT	0.00374%
APACHE TRIBE OF OKLAHOMA	0.02048%
ARCTIC SLOPE NATIVE ASSOCIATION	0.12320%
ARCTIC VILLAGE COUNCIL	0.00187%
AROOSTOOK BAND OF MICMACS	0.11456%
ASA'CARSARMIUT TRIBAL COUNCIL	0.04021%
ASSOC OF VILLAGE COUNCIL PRESIDENTS	1.03218%
ATHABASCAN TRIBAL GOVERNMENTS, COUNCIL OF	0.01311%
ATMAUTHLUAK TRADITIONAL COUNCL	0.03548%
AUGUSTINE BAND-MISSION INDIANS	0.01927%
BAD RIVER BAND OF LAKE	0.06903%
BARROW, NATIVE VILLAGE OF	0.22572%
BATTLE MOUNTAIN BAND COUNCIL	0.09396%
BAY MILLS INDIAN COMMUNITY	0.24618%
BEAR RIVER BAND OF ROHNERVILLE	0.05627%
BEAVER VILLAGE COUNCIL	0.02577%

BERRY CREEK RANCHERIA	0.04022%
BIG LAGOON RANCHERIA	0.06423%
BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY	0.03814%
BIG SANDY RANCHERIA	0.03051%
BIG VALLEY RANCHERIA	0.04370%
BILL MOORE SLOUGH ELDER'S COUNCIL	0.01217%
BISHOP RESERVATION	0.07778%
BLUE LAKE RANCHERIA	0.11847%
BOARD OF EDUCATION FOR THE PUEBLO OF LAGUNA	0.00514%
BRIDGEPORT INDIAN COLONY	0.03177%
BRISTOL BAY NATIVE ASSOCIATION	1.78271%
BUCKLAND IRA COUNCIL	0.02974%
BUENA VISTA RANCHERIA OF ME-WU	0.06216%
BURNS PAIUTE TRIBE	0.10976%
CABAZON BAND OF MISSION INDIANS	0.07405%
CADDO TRIBE OF OKLAHOMA	0.02151%
CAHTO TRIBE	0.03163%
CALIFORNIA VALLEY MIWOK TRIBE	0.03744%
CAMPO BAND OF MISSION INDIANS	0.02961%
CATAWBA INDIAN NATION	0.06324%
CEDARVILLE RANCHERIA	0.05752%
CHALKYITISIK VILLAGE COUNCIL	0.02472%
CHEFORNAK TRADITIONAL COUNCIL	0.00936%
CHEHALIS BUSINESS COUNCIL	0.25315%
CHEMEHUEVI INDIAN TRIBE	0.05413%
CHEROKEE BOYS CLUB INC	0.02430%
CHEROKEE NATION	0.97034%
CHEVAK TRADITIONAL COUNCIL	0.01116%
CHEYENN ARAPAHO HOUSING AUTHORITY	0.00094%
CHEYENNE RIVER SIOUX TRIBE	0.80686%
CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA	0.38526%
CHICKALOON NATIVE VILLAGE	0.05578%
CHICKASAW NATION	0.36323%
CHICKEN RANCH RANCHERIA	0.01570%
CHIEF DULL KNIFE COLLEGE	0.16870%
CHIEF-BUG O NAY GE SHIG SCHOOL	0.18660%
CHIGNIK LAKE TRADITIONAL COUNCIL	0.00281%
CHILKAT INDIAN VILLAGE	0.04646%
CHILKOOT INDIAN ASSOCIATION	0.00396%
CHINIK ESKIMO COMMUNITY	0.00374%
CHIPPEWA-CREE INDIANS OF THE ROCKY BOY'S RESERVATION	1.10846%
CHISTOCHINA VILLAGE COUNCIL	0.02335%

CHITIMACHA TRIBE OF LOUISIANA	0.19820%
CHITINA VILLAGE COUNCIL	0.04453%
CHOCTAW NATION	0.41987%
CHUATHBALUK TRADITIONAL COUNCIL	0.01672%
CHUGACH REGIONAL RESOURCES COMMISSION	0.05408%
CHUGACHMIUT	0.32218%
CHULONAWICK NATIVE VILLAGE	0.01492%
CHUSKA SCHOOL BOARD OF EDUCATION INC	0.00439%
CIRCLE OF LIFE SURVIVAL SCHOOL	0.02460%
CIRCLE VILLAGE COUNCIL	0.00958%
CITIZEN BAND OF POTAWATOMI	0.20821%
CLOVERDALE RANCHERIA TRIBE	0.05067%
COAST INDIAN COMMUNITY OF RESIGHINI RANCHERIA	0.05621%
COCOPAH INDIAN TRIBE	0.09479%
COEUR D'ALENE TRIBE OF IDAHO	0.49613%
COLORADO RIVER INDIAN TRIBES	0.29017%
COLUMBIA RIVER INTERTR FISH CO	0.85949%
COLVILLE BUSINESS COUNCIL	1.56037%
COMANCHE NATION	0.06826%
CONF TRBS OF COOS LOWER UMPQUA	0.17602%
CONF TRBS UMATILLA INDIAN RESERVATION	0.69354%
CONF TRBS&BDS OF YAKIMA INDIAN NATION	0.84487%
CONF TRIBES OF THE GRANDE ROND	0.61892%
CONF TRIBES OF WARM SPRINGS	0.88400%
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION	0.96845%
CONFEDERATED TRIBE GOSHUTE RESERVATION	0.08155%
COOK INLET TRIBAL COUNCIL	0.16706%
COPPER RIVER NATIVE ASSOCIATION	0.13003%
COQUILLE INDIAN TRIBE	0.41888%
CORTINA RANCHERIA	0.04813%
COUSHATTA TRIBE OF LOUISIANA	0.10195%
COW CREEK AND OF UMPQUA TRIBE	0.10711%
COYOTE VALLEY BAND OF POMO INDIANS	0.02858%
CROW CREEK SIOUX TRIBE	0.11675%
CROW TRIBE OF MONTANA	0.33974%
CURYUNG TRIBAL COUNCIL	0.00187%
DELAWARE NATION	0.03369%
DELAWARE TRIBE OF INDIANS	0.00875%
DEVIL'S LAKE SIOUX TRIBE	0.00374%
DINE BI OLTA SCHOOL BOARD ASSOCIATION	0.17975%
DOT LAKE VILLAGE COUNCIL	0.01994%

DOUGLAS INDIAN ASSOCIATION	0.03837%
DRY CREEK RANCHERIA BAND OF POMO INDIANS	0.03287%
DUCK VALLEY, SHOSHONE-PAIUTE OF	0.29372%
DUCKWATER SHOSHONE TRIBE	0.19845%
EAGLE TRADITIONAL COUNCIL	0.00499%
EASTERN BAND OF CHEROKEE INDIANS	0.13817%
EASTERN SHAWNEE TRIBE OF OKLAHOMA	0.10012%
EEK TRADITIONAL COUNCIL	0.01323%
EGEGIK VILLAGE COUNCIL	0.00094%
EIGHT NORTHERN INDIAN PUEBLOS	0.01900%
ELEM INDIAN COLONY	0.04345%
ELK VALLEY RANCHERIA	0.06770%
ELKO BAND COUNCIL	0.08267%
ELY SHOSHONE TRIBE	0.13924%
EMMONAK TRIBAL COUNCIL	0.04256%
ENTERPRISE RANCHERIA	0.04424%
EWIIAAPAAYP BAND OF KUMEYAAY INDIANS	0.07062%
EYAK, NATIVE VILLAGE OF	0.02423%
FAIRBANKS NATIVE ASSOCIATION	0.07195%
FALLON PAIUTE SHOSHONE TRIBE	0.12657%
FALSE PASS TRIBAL COUNCIL	0.00706%
FLANDREAU SANTEE SIOUX TRIBE	0.10255%
FOND DU LAC OJIBWAY SCHOOL	0.02430%
FOREST COUNTY POTAWATOMI COMMUNITY	0.02651%
FORT BELKNAP COMMUNITY COUNCIL	0.71667%
FORT MCDERMITT PAIUTE SHOSHONE	0.04428%
FORT MCDOWELL MOHAVE APACHE	0.08260%
FORT MOJAVE INDIAN TRIBE	0.17253%
FORT PECK TRIBAL EXECUTIVE BOARD	0.42030%
FORT SILL APACHE TRIBE	0.05478%
FT BERTHOLD COMMUNITY COLLEGE	0.02828%
FT BIDWELL INDIAN COMMUNITY COLLEGE	0.06296%
FT. INDEPENDENCE RESERVATION	0.03341%
GALENA VILLAGE	0.04423%
GAMBELL, NATIVE VILLAGE OF	0.12677%
GEORGETOWN TRIBAL COUNCIL	0.01486%
GILA RIVER INDIAN COMMUNITY	0.90546%
GOODNEWS BAY NATIVE VILLAGE	0.01314%
GRAND TRAVERSE BAND	0.40128%
GRAYLING IRA COUNCIL	0.00281%
GREAT LAKES INDIAN FISH	0.40774%
GREAT LAKES INTER-TRIBAL COUNCIL	0.01340%
GREENVILLE RANCHERIA	0.02482%

GUIDIVILLE RANCHERIA	0.12847%
GULKANA VILLAGE COUNCIL	0.02300%
HABEMATOLEL POMO OF UPPER LAKE	0.03569%
HANNAHVILLE INDIAN COMMUNITY	0.20852%
HANNAHVILLE INDIAN SCHOOL	0.52304%
HAVASUPAI TRIBE	0.04805%
HO-CHUNK NATION	0.02845%
HOH INDIAN TRIBE	0.19181%
HOONAH INDIAN ASSOCIATION	0.08932%
HOOPA VALLEY TRIBAL COUNCIL	1.00054%
HOOPER BAY TRADITIONAL COUNCIL	0.00666%
HOPI INDIAN CREDIT ASSOCIATION	0.01601%
HOPLAND RESERVATION	0.03284%
HOULTON BAND OF MALISEET INDIANS	0.15981%
HUALAPAI TRIBE	0.50074%
HURON POTWATOMI INC.	0.02836%
HYDABURG COOPERATION ASSOCIATION	0.04224%
IGIUGIG VILLAGE COUNCIL	0.02863%
IHANKTONWAN COMMUNITY COLLEGE	0.00634%
ILIAMNA VILLAGE COUNCIL	0.03703%
INDIAN CENTER, INC.	0.00187%
INDIAN HEALTH COUNCIL INC	0.05032%
INTER TRIBAL COUNCIL AVT	0.00562%
INTER TRIBAL COUNCIL OF MI INC	0.00468%
INTER-TRIBAL COUCIL OF CA INC	0.00094%
INUPIAT COMMUNITY OF THE ARCTIC SLOPE	0.07490%
IOWA TRIBE OF OKLAHOMA	0.07191%
IQRMIUT TRADITIONAL COUNCIL	0.01695%
JAMESTOWN S'KLALLAM TRIBE	0.51076%
JENA BAND OF CHOCTAW INDIANS	0.04486%
JICARILLA APACHE TRIBE	0.14038%
KAIBAB PAIUTE TRIBE	0.05637%
KAKE, ORGANIZED VILLAGE OF	0.14416%
KALISPEL BUSINESS COMMITTEE	0.08081%
KARLUK IRA COUNCIL	0.02470%
KARUK TRIBE	0.26520%
KASHIA BAND OF POMO INDIANS OF STEWARTS POINT RANCHERIA	0.04874%
KAW NATION	0.12717%
KAWERAK, INC.	1.81756%
KENAITZE INDIAN TRIBE	0.06581%
KETCHIKAN INDIAN CORPORATION	0.73550%
KEWEENAW BAY INDIAN COMMUNITY	0.20792%

KIALEGEE TRIBAL TOWN	0.04649%
KIANA TRADITIONAL COUNCIL	0.03441%
KICKAPOO OF OKLAHOMA	0.10920%
KICKAPOO TRADITONAL TRIBE OF TEXAS	0.06810%
KICKAPOO TRIBE IN KANSAS	0.11255%
KIOWA TRIBAL HOUSING PROGRAMS	0.00281%
KIOWA TRIBE OF OKLAHOMA	0.06585%
KIPNUK TRADITIONAL COUNCIL	0.02118%
KNIK TRIBAL COUNCIL	0.04543%
KOBUK TRADITIONAL COUNCIL	0.02098%
KODIAK AREA NATIVE ASSOCIATION	0.05955%
KOLIGANEK VILLAGE COUNCIL	0.00407%
KONGIGANAK TRADITIONAL COUNCIL	0.00468%
KOOTENAI TRIBE OF IDAHO	0.13183%
KOTLIK TRADITIONAL COUNCIL	0.00187%
KOTZEBUE, NATIVE VILLAGE OF	0.27061%
KUIGPAGMIUT, INC.	0.06255%
KUSHKOKWIM NATIVE ASSOCIATION	0.10258%
KWIGILLINGOK IRA COUNCIL	0.02824%
KWINHAGAK, NATIVE VILLAGE OF	0.06049%
LA JOLLA BAND OF MISSION INDIANS	0.02734%
LAC COURTE OREILLES BAND OF LAKE SUPERIOR	
CHIPPEWA INDIANS OF WISCONSIN	0.34217%
LAC DU FLAMBEAU CHIPPEWA	0.16648%
LAC VIEUX DESERT BAND OF LAKE	0.07181%
LARSEN BAY TRIBAL COUNCIL	0.02883%
LAS VEGAS INDIAN CENTER	0.00191%
LAS VEGAS PAIUTE TRIBE	0.02901%
LIME VILLAGE TRAD. COUNCIL	0.01363%
LITTLE HOOP COMMUNITY COLLEGE	0.00621%
LITTLE RIVER BAND-OTTAWA INIANDNS	0.17344%
LITTLE TRAVERSE BAY BAND-INIANDNS	0.31266%
LOCAL INDIAN EDUCATION INC	0.04380%
LONE PINE PAIUTE-SHOSHONE RESERVATION	0.03108%
LOVELOCK PAIUTE TRIBE	0.07174%
LOWER BRULE SIOUX TRIBE	0.13674%
LOWER ELWHA S'KLALLAM TRIBE	0.29604%
LOWER SIOUX INDIAN COMMUNITY	0.02567%
LUMMI TRIBE OF THE LUMMI RESERVATION	1.47285%
LYTTON RANCHERIA	0.04832%
MAINE INDIAN EDUCATION	0.14435%
MAKAH INDIAN TRIBE OF THE MAKAH INDIAN	
RESERVATION	0.90405%

MANCHESTER/PT. ARENA RANCHERIA	0.02764%
MANDAREE SCHOOL DISTRICT 36	0.01872%
MANILAQ ASSOCIATION	0.19744%
MANLEY HOT SPRINGS	0.00655%
MANOKOTAK VILLAGE COUNCIL	0.00488%
MANZANITA BAND OF DIEGUENO MISSION INDIANS OF THE MANZANITA RESERVATION	0.03316%
MARIANO LAKE COMMUNITY	0.01336%
MASHANTUCKET PEQUOT TRIBE	0.08350%
MATCH E BE NASH SHE WISH BAND	0.02004%
MCGRATH NATIVE VILLAGE COUNCIL	0.01591%
MECHOOPDA OF CHICO RANCHERIA	0.05929%
MENOMINEE INDIAN TRIBE OF WISC	0.34443%
MENOMINEE TRIBAL ENTERPRISES	0.14366%
MENTASTA TRADITIONAL VILLAGE COUNCIL	0.05446%
MESA GRANDE BAND-MISSION INDIANS	0.04514%
MESCALERO APACHE TRIBE GRANTS	0.12469%
METLAKATLA INDIAN COMMUNITY	0.45651%
MIAMI TRIBE OF OKLAHOMA	0.04130%
MICCOSUKEE CORPORATION	0.74360%
MIDDLETOWN RANCHERIA	0.03962%
MILLE LACS BAND OF CHIPPEWA	0.15804%
MINNESOTA CHIPPEWA TRIBE	0.08199%
MINNESOTA CHIPPEWA TRIBE - BOIS FORTE BAND (NETT LAKE)	0.20384%
MINNESOTA CHIPPEWA TRIBE - FOND DU LAC BAND	0.08221%
MINNESOTA CHIPPEWA TRIBE - GRAND PORTAGE BAND	0.08634%
MINNESOTA CHIPPEWA TRIBE - LEECH LAKE BAND	0.25304%
MINNESOTA CHIPPEWA TRIBE - WHITE EARTH BAND	0.34571%
MISS BAND OF CHOCTAW INDIANS	2.09233%
MOAPA BAND OF PAIUTE INDIANS	0.04194%
MODOC TRIBE OF OKLAHOMA	0.10256%
MOORETOWN RANCHERIA	0.07549%
MUCKLESHOOT INDIAN TRIBE	0.14739%
MUSCOGEE (CREEK) NATION	0.47485%
N PLAINS INTERTRIBAL COURT OF APPEALS	0.02358%
NAKNEK VILLAGE COUNCIL	0.02452%
NANWALEK IRA COUNCIL	0.00187%
NAPASKIAK TRIBAL COUNCIL	0.01691%
NARRAGANSETT INDIAN TRIBE	0.30186%
NATIVE AMERICAN COMMUNITY DEVELOPMENT CORPORATION	0.00187%

NATIVE COUNCIL OF PORT HEIDEN	0.02237%
NATIVE VILLAGE OF AKHIOK	0.00468%
NATIVE VILLAGE OF AMBLER	0.01822%
NATIVE VILLAGE OF CHENEGA	0.00187%
NATIVE VILLAGE OF DEERING	0.01941%
NATIVE VILLAGE OF EKLUTNA	0.02667%
NATIVE VILLAGE OF ELIM	0.00655%
NATIVE VILLAGE OF FORT YUKON	0.00597%
NATIVE VILLAGE OF KASIGLUK	0.02271%
NATIVE VILLAGE OF KIVALINA	0.01895%
NATIVE VILLAGE OF KLUTI-KAAH	0.01217%
NATIVE VILLAGE OF MARSHALL	0.02882%
NATIVE VILLAGE OF MEKORYUK	0.04410%
NATIVE VILLAGE OF NAPAKIAK	0.00187%
NATIVE VILLAGE OF NOATAK	0.02601%
NATIVE VILLAGE OF PAIMIUT	0.01648%
NATIVE VILLAGE OF PITKA'S	0.01562%
NATIVE VILLAGE OF POINT HOPE	0.09043%
NATIVE VILLAGE OF SAVOONGA	0.00374%
NATIVE VILLAGE OF SHELDON	0.00094%
NATIVE VILLAGE OF TYONEK	0.03233%
NATIVE VILLAGE OF UNALAKLEET	0.00749%
NATIVE VILLAGE OF VENETIE	0.02320%
NATIVE VILLAGE OF WALES	0.00421%
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY	0.23813%
NAY AH SHING SCHOOL	0.06302%
NB INDIAN INTER TRIBAL DEVELOPMENT CORPORATION	0.00187%
NEW KOLIGANEK VILLAGE COUNCIL	0.00094%
NEW STUYAHOK TRADITIONAL	0.01764%
NEWHALEN TRIBAL COUNCIL	0.02412%
NEWTOK TRADITIONAL COUNCIL	0.02404%
NEZ PERCE TRIBE	0.55381%
NIGHTMUTE TRADITIONAL COUNCIL	0.01959%
NINILCHIK TRADITIONAL COUNCIL	0.05194%
NISQUALLY INDIAN TRIBE	0.56972%
NOME ESKIMO COMMUNITY	0.14242%
NONDALTON TRIBAL COUNCIL	0.04539%
NOOKSACK INDIAN TRIBE	0.27198%
NOORVIK IRA COUNCIL	0.02871%
NORTH FORK RANCHERIA	0.07585%
NORTHERN ARAPAHO TRIBE	0.25759%
NORTHERN CHEYENNE OF THE NORTHERN CHEYENNE	0.30464%

INDIAN RESERVATION	
NORTHERN PONCA HOUSING	0.00281%
NORTHWAY VILLAGE COUNCIL	0.03343%
NORTHWEST INDIAN FISHERIES COMMISSION	0.88240%
NORTHWEST INTERTRIBAL COURT SYSTEM	0.07573%
NULATO TRIBAL COUNCIL	0.07064%
NUNAPITCHUK IRA COUNCIL	0.01123%
NW BAND OF SHOSHONI NATION	0.04301%
O S T PARK AND RECREATION AUTHORITY	0.07658%
OGLALA LAKOTA COLLEGE	0.07478%
OGLALA SIOUX TRIBE	1.50505%
OHKAY OWINGEH TRIBE OF NEW MEXICO	0.14526%
OHOAMIUT	0.00094%
OLD HARBOR TRIBAL COUNCIL	0.01885%
OMAHA TRIBE OF NEBRASKA	0.33312%
ONEIDA INDIAN NATION OF NY	0.11601%
ONEIDA TRIBAL SCHOOL	0.14381%
ONEIDA TRIBE OF WISCONSIN	0.08468%
ORGANIZED VILLAGE OF KWETHLUK	0.05853%
ORUTSARARMIUT NATIVE COUNCIL	0.14878%
OSAGE NATION	0.11170%
OST PUBLIC SAFETY COMMISSION	1.40543%
OTOE MISSOURIA TRIBE OF OKLAHOMA	0.08702%
OUZINKIE TRIBAL COUNCIL	0.02638%
OWENS VALLEY INDIAN WATER COMMISSION	0.01503%
PAIUTE INDIAN TRIBE OF UTAH	0.12721%
PASCUA YAQUI TRIBE	0.38739%
PASSAMAQUODDY TRIBE - J.T.C.	0.03311%
PASSAMAQUODDY TRIBE INDIAN TOWNSHIP	0.33571%
PASSAMAQUODDY TRIBE PLEASANT POINT	0.27083%
PAUMA BAND OF MISSION INDIANS	0.02255%
PAWNEE NATION OF OKLAHOMA	0.13059%
PEACE PIPE INDIAN CENTER	0.00187%
PECHANGA BAND OF MISSION INDIANS	0.01934%
PEDRO BAY VILLAGE COUNCIL	0.02805%
PENOBSCOT INDIAN NATION	0.47233%
PEORIA TRIBE OF OKLAHOMA	0.07741%
PETERSBURG INDIAN ASSOCIATION	0.00842%
PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS	0.10771%
PILOT STATION TRAD. COUNCIL	0.00187%
PINOLEVILLE POMO NATION	0.04058%
PINON COMMUNITY SCHOOL	0.00155%
PIT RIVER TRIBE	0.03587%

PLATINUM TRADITIONAL VILLAGE	0.01556%
POARCH BAND OF CREEK INDIANS	0.37100%
POINT NO POINT TREATY COUNCIL	0.06340%
POKAGON BAND OF POTAWATOMI	0.29191%
PONCA TRIBE OF NEBRASKA	0.27910%
PONCA TRIBE OF OKLAHOMA	0.08234%
PORT GAMBLE S'KLALLAM TRIBE	0.58897%
PORT GRAHAM VILLAGE COUNCIL	0.00187%
PORT LIONS TRADITIONAL. TRIBAL COUNCIL	0.02732%
POTTER VALLEY TRIBE	0.01208%
PRAIRIE BAND POTAWATOMI NATION	0.07733%
PRAIRIE ISLAND DAKOTA COMMUNITY	0.03195%
PUEBLO DE COCHITI	0.05474%
PUEBLO DE SAN IDEFONSO	0.04320%
PUEBLO OF ACOMA	0.15794%
PUEBLO OF ACOMA HOUSING	0.00468%
PUEBLO OF ISLETA	0.07308%
PUEBLO OF JEMEZ	0.09153%
PUEBLO OF LAGUNA	0.23144%
PUEBLO OF LAGUNA DEPT OF EDUCATION	0.02808%
PUEBLO OF NAMBE	0.03278%
PUEBLO OF PICURIS	0.03538%
PUEBLO OF POJOAQUE	0.07628%
PUEBLO OF SAN FELIPE	0.04910%
PUEBLO OF SANDIA	0.04094%
PUEBLO OF SANTA ANA	0.04597%
PUEBLO OF TAOS	0.21266%
PUEBLO OF ZIA	0.04561%
PUEBLO OF ZUNI	0.33309%
PUYALLUP TRIBE OF INDIANS	0.24829%
PYRAMID LAKE PAIUTE TRIBE	0.13672%
QAGAN TAYAGUNGIN TRIBES	0.01694%
QUALINGIN TRIBE OF UNALASKA	0.02364%
QUAPAW TRIBE OF OKLAHOMA	0.06873%
QUARTZ VALLEY INDIAN RESERVATION	0.07509%
QUILEUTE TRIBAL COUNCIL	0.67443%
QUINAULT INDIAN NATION	2.67507%
QUTEKCAK NATIVE TRIBE	0.00187%
RAMAH NAVAJO CHAPTER	0.91699%
RAMAH NAVAJO SCHOOL BOARD INC	0.18872%
RAMONA BAND OF CAHUILLA	0.02711%
RAMPART VILLAGE COUNCIL	0.00094%
RAPID CITY INDIAN HEALTH BRD.	0.00187%

RED CLIFF BAND OF LAKE SUPERIOR	0.25899%
RED DEVIL TRADITIONAL COUNCIL	0.00094%
RED HORSE LODGE INC	0.00481%
RED LAKE BAND OF CHIPPEWA INDIANS	0.56719%
REDDING RANCHERIA	0.11979%
REDWOOD VALLEY LITTLE RIVER	0.04236%
RENO SPARKS TRIBAL COUNCIL	0.06405%
RESERVATION TRANSPRTN AUTHORITY	0.00692%
RINCON BAND OF MISSION INDIANS	0.02719%
RIVERSIDE-SAN BERNARDINO	0.02829%
ROBINSON RANCHERIA	0.04027%
ROCK POINT SCHOOL INC	0.00187%
ROSEBUD SIOUX TRIBE	0.62636%
ROUND VALLEY RESERVATION	0.11867%
RUBY TRIBAL COUNCIL	0.01952%
SAC AND FOX NATION	0.38582%
SAC AND FOX SETTLEMENT SCHOOL	0.09058%
SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA	0.06625%
SAGINAW CHIPPEWA INDIAN TRIBE	0.14279%
SALISH/KOOTENAI COLLEGE	0.02809%
SALT RIVER PIMA MARICOPA	0.38735%
SAMISH INDIAN NATION	0.08569%
SAN CARLOS APACHE TRIBE	1.66270%
SAN JUAN SOUTHERN PAIUTE TRIBE	0.06132%
SAN PASQUAL BAND OF MISSION INDIANS	0.02763%
SANTA CLARA PUEBLO	0.15704%
SANTA FE INDIAN SCHOOL	0.00094%
SANTA YNEZ BAND OF MISSION INDIANS	0.03395%
SANTA YNEZ TRIBAL HEALTH CLINIC	0.00374%
SANTEE SIOUX NATION	0.12536%
SANTO DOMINGO TRIBE	0.06140%
SAUK SUIATTLE INDIAN TRIBE	0.10893%
SAULT STE MARIE TRIBE	0.50239%
SCAMMON BAY TRAD. COUNCIL	0.00187%
SCOTTS VALLEY RANCHERIA	0.02690%
SELAWIK NATIVE VILLAGE	0.05227%
SELDOVIA VILLAGE TRIBE	0.05103%
SEMINOLE NATION OF OKLAHOMA	0.08802%
SEMINOLE TRIBE OF FLORIDA	0.47019%
SENECA CAYUGA TRIBE OF OKLAHOMA	0.05295%
SENECA NATION OF INDIANS	0.11006%
SHAKOPEE MDEWAKANTON SIOUX	0.01798%
SHAKTOOLIK, NATIVE VILLAGE OF	0.00562%

SHERWOOD VALLEY RANCHERIA	0.05411%
SHINGLE SPRINGS RANCHERIA	0.04293%
SHIPROCK ASSOCIATED SCHOOLS, INC.	0.00103%
SHISHMAREF, NATIVE VILLAGE OF	0.00749%
SHOALWATER BAY TRIBAL COUNCIL	0.17876%
SHOSHONE & ARAPAHOE TRIBES	0.08358%
SHOSHONE BANNOCK TRIBES INC	0.62532%
SHOSHONE TRIBE OF THE WIND RIVER RESERVATION, WYOMING	0.08593%
SILETZ, CONFEDERATED TRIBES OF	0.41517%
SINTE GLESKA UNIVERSITY	0.13679%
SIOUX CITY IND EDUC COMMITTEE	0.01404%
SISSETON WAHPETON HOUSING AUTHORITY	0.01591%
SISSETON-WAHPETON COMM.COLLEGE	0.02107%
SISSETON-WAHPETON OYATE	0.26163%
SITKA TRIBE	0.32745%
SITTING BULL COLLEGE	0.04234%
SKAGIT SYSTEM COOPERATIVE	0.10119%
SKOKOMISH INDIAN TRIBE	0.33795%
SKULL VALLEY BAND OF GOSHUTES	0.01123%
SKY PEOPLE HIGHER EDUCATION	0.19123%
SMITH RIVER RANCHERIA	0.06642%
SNOQUALMIE INDIAN TRIBE	0.04367%
SO PUGET INTER TRIBAL PLANNING	0.00281%
SOBOBA BAND OF MISSION INDIANS	0.02209%
SOKAOGON CHIPPEWA COMMUNITY	0.05820%
SOUTH FORK BAND COUNCIL	0.01498%
SOUTHERN INDIAN HEALTH COUNCIL	0.06430%
SOUTHERN UTE INDIAN TRIBE	0.19098%
SPIRIT LAKE SIOUX TRIBE	0.13748%
SPOKANE TRIBE OF THE SPOKANE RESERVATION	0.20912%
SQUAXIN ISLAND TRIBAL COUNCIL	0.49505%
ST CROIX TRIBAL COUNCIL	0.05328%
ST MICHAEL,NATIVE VILLAGE OF	0.01030%
ST MICHAELS ASSOCIATION FOR SPECIAL EDUCATION	0.13744%
ST REGIS MOHAWK TRIBE	0.12692%
ST. PAUL IRA COUNCIL	0.01123%
STANDING ROCK SIOUX TRIBE	0.49836%
STEVENS VILLAGE COUNCIL	0.02352%
STILLAGUAMISH BOARD OF DIRECTORS	0.20653%
STOCKBRIDGE MUNSEE COMMUNITY	0.04565%
SUMMIT LAKE PAIUTE TRIBE	0.11473%
SUN'AQ TRIBE OF KODIAK	0.07733%

SUQUAMISH INDIAN TRIBE OF THE PORT MADISON RESERVATION	0.62053%
SUSANVILLE INDIAN RANCHERIA	0.05397%
SWINOMISH INDIAN TRIBE	0.31439%
TANACROSS VILLAGE COUNCIL	0.01945%
TANANA CHIEFS CONFERENCE, INC.	1.38181%
TANANA IRA NATIVE COUNCIL	0.05307%
TANGIRNAQ NATIVE VILLAGE	0.02120%
TE MOAK TRIBE-WESTERN SHOSHONE	0.05913%
TESUQUE PUEBLO	0.04435%
THE BLACKFEET TRIBE	0.37017%
THE BROWNSTONE WOMAN PROJECT	0.00281%
THE HOPI TRIBE	0.38443%
THE KLAMATH TRIBE	0.64137%
THE NAVAJO NATION	6.78976%
THE QUECHAN TRIBE	0.09805%
THLOPTHLOCCO TRIBAL TOWN	0.04045%
THREE AFFILIATED TRIBES	0.93110%
TIMBISHA SHOSHONE TRIBE	0.02588%
TLINGIT-HAIDA, CENTRAL COUNCIL OF	1.34230%
TO'HAJILEE COMMUNITY SCHOOL	0.09955%
TOHATCHI SPECIAL EDUCATION & TRAINING CENTER	0.02052%
TOHONO O'ODHAM HOUSING AUTHORITY	0.00562%
TOHONO O'ODHAM NATION	0.95390%
TOIYABE INDIAN HEALTH PROJECT,INC	0.00987%
TOKSOOK BAY TRADITIONAL COUNCIL	0.02284%
TONKAWA TRIBE OF OKLAHOMA	0.07998%
TONTO APACHE TRIBE	0.02780%
TORRES MARTINEZ BAND OF MISSION INDIANS	0.03453%
TRADITONAL COUNCIL OF TOGIAK	0.01837%
TRENTON INDIAN SERVICE AREA	0.02566%
TRINIDAD RANCHERIA	0.08317%
TULALIP TRIBES OF WASHINGTON	0.45414%
TULE RIVER TRIBAL COUNCIL	0.06685%
TULUKSAK IRA COUNCIL	0.03036%
TUNICA-BILOXI INDIANS OF LOUISIANA	0.14958%
TUNTUTULIAK TRADITIONAL COUNCIL	0.00187%
TUNUNAK IRA COUNCIL	0.02340%
TUOLUMNE RANCHERIA	0.02814%
TURTLE MOUNTAIN BAND	0.29615%
TURTLE MOUNTAIN COMMUNITY COLLEGE	0.03356%
TWIN BUTTES SCHOOL DISTRICT 37	0.01791%
TWIN HILLS VILLAGE COUNCIL	0.00562%

UINTAH/OURAY UTE INDIAN TRIBE	0.11470%
UMKUMIUTE TRADITIONAL COUNCIL	0.01454%
UNITED CROW BAND INC	0.01382%
UNITED SIOUX TRIBES DEVELOPMENT CORPORATION	0.03829%
UNITED TRIBES TECHNICAL COLLEGE	0.49486%
UNITED VILLAGES INC	0.02861%
UPPER KALSKAG TRAD. COUNCIL	0.00187%
UPPER SIOUX COMMUNITY	0.02401%
UPPER SKAGIT INDIAN TRIBE	0.16772%
UTE MOUNTAIN UTE TRIBE	0.26337%
VALDEZ NATIVE TRIBE	0.02583%
VILLAGE OF AFOGNAK	0.03050%
VILLAGE OF ANIAK	0.01123%
VILLAGE OF LOWER KALSKAG	0.00468%
VILLAGE OF SALAMATOFF	0.00118%
WAHPETON INDIAN SCH BRD INC	0.18193%
WAINWRIGHT TRADITIONAL COUNCIL	0.00610%
WALKER RIVER PAIUTE TRIBE	0.09699%
WAMPANOAG TRIBE OF GAY HEAD	0.34909%
WASHOE TRIBE	0.05558%
WELLS BAND COUNCIL	0.03902%
WHITE MOUNTAIN APACHE TRIBE	0.67374%
WHITE MOUNTAIN NATIVE VILLAGE	0.00562%
WICHITA AND AFFILIATED TRIBES	0.03317%
WILTON RANCHERIA	0.00281%
WINGATE BOARD OF EDUCATION INC	0.13610%
WINNEBAGO TRIBE OF NEBRASKA	0.13901%
WIYOT TRIBE	0.05670%
WYANDOTTE TRIBE OF OKLAHOMA	0.08412%
YAKUTAT TLINGIT TRIBE	0.09001%
YANKTON SIOUX TRIBE	0.17574%
YAVAPAI APACHE TRIBE	0.20086%
YAVAPAI PRESCOTT TRIBE	0.07920%
YERINGTON PAIUTE TRIBE	0.04718%
YOMBA SHOSHONE TRIBE	0.08757%
YSLETA DEL SUR PUEBLO	0.14701%
YUPIIT OF ANDREAFSKI	0.02320%
YUROK TRIBE	0.74984%
TOTAL	98.95741%

**Table 2. Class Members That Have Not Previously
Been Given an Opportunity to Request Exclusion**

Class Member Name	Class Member Distribution Percentage
ALTURAS INDIAN RANCHERIA	0.00412%
ANGOON COMMUNITY ASSOCIATION	0.00187%
ANVIK VILLAGE	0.01798%
BARONA BAND OF MISSION INDIANS	0.00749%
BENTON PAIUTE RESERVATION	0.00936%
BONSALL UNION SCHOOL DISTRICT	0.00562%
CAHUILLA BAND OF INDIANS	0.01404%
CAYUGA NATION	0.01311%
CHEESH-NA TRIBE	0.01790%
CHIGNIK LAGOON VILLAGE COUNCIL	0.00094%
COLD SPRINGS RANCHERIA	0.02061%
COLUSA RANCHERIA	0.00655%
COWLITZ INDIAN TRIBE	0.03108%
CROOKED CREEK TRAD. COUNCIL	0.01109%
EKWOK VILLAGE COUNCIL	0.00094%
FED. INDIANS OF GRATON RANCHERIA	0.01186%
FORT BERTHOLD HOUSING AUTHORITY	0.00207%
GRINDSTONE INDIAN RANCHERIA OF WINTUN- WAILAKI INDIANS	0.00749%
IIPAY NATION OF SANTA YSABEL	0.01734%
INAJA BAND OF MISSION INDIANS	0.00804%
INDIAN CHILD & FAMILY PRESERVATION	0.00374%
INDIAN CHILD & FAMILY SERVICES	0.01217%
INTER TRIBAL COUNCIL OF NEVADA	0.01277%
INTERTRIBAL BISON COUNCIL	0.00187%
IONE BAND OF MIWOK INDIANS	0.01113%
IOWA TRIBE OF KANSAS AND NEBRASKA	0.01591%
JAMUL INDIAN VILLAGE	0.01518%
KALTAG TRIBAL COUNCIL	0.00885%
KING SALMON TRIBE	0.01217%
KOYUKUK NATIVE VILLAGE	0.00468%
LA POSTA BAND OF MISSION INDIANS	0.02171%
LAKOTA OYATE WAKANYEJA OWICAKI	0.00468%
LOS COYOTES BAND OF MISSION INDIANS	0.00749%
LOWER LAKE RANCHERIA	0.00374%
MASHPEE WAMPANOAG TRIBE	0.02633%
MNI SOSE INTERTRIBAL WATER RIGHTS COALITION	0.00616%

MORONGO BAND OF MISSION INDIANS	0.00956%
NATIVE AMERICAN FAMILY SERVICES	0.01779%
NATIVE VILLAGE OF CANTWELL	0.00468%
NATIVE VILLAGE OF GAKONA	0.01665%
NATIVE VILLAGE OF KAKTOVIK	0.01459%
NATIVE VILLAGE OF KALSKAG	0.00281%
NATIVE VILLAGE OF NUIQSUT	0.01157%
NATIVE VILLAGE OF TAZLINA	0.00842%
NAVAJO TECHNICAL COLLEGE	0.29699%
NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS	0.00842%
ORGANIZED VILLAGE OF KASAAN	0.00187%
OTTAWA TRIBE OF OKLAHOMA	0.03155%
PALA BAND OF MISSION INDIANS	0.01217%
PONCA ECONOMIC DEVELOPMENT CORPORATION	0.00868%
SAC AND FOX TRIBE OF MISSOURI	0.01901%
SAN DIEGO UNIFIED SCHOOL DISTRICT	0.00187%
SAN FELIPE PUEBLO HOUSING AUTHORITY	0.00281%
SAN MANUEL BAND-MISSION INDIAN	0.00468%
SANTA ROSA BAND OF MISSION INDIANS	0.00859%
SHAWNEE TRIBE	0.00752%
SHINNECOCK INDIAN NATION FUND, INC.	0.00519%
SICANGU CHILD AND FAMILY SERVICES	0.00468%
SKAGWAY VILLAGE	0.00281%
SLEETMUTE TRADITIONAL COUNCIL	0.01120%
SOUTH NAKNEK VILLAGE COUNCIL	0.01528%
SOUTHERN CA INDIAN CENTER INC	0.00685%
SOUTHERN CALIF TRIBAL CHAIRMEN	0.00374%
SYCUAN BAND OF MISSION INDIANS	0.00803%
TE-MOAK SHOSHONE LAW ENFORCEMENT SERVICES	0.01049%
THE MOHEGAN TRIBE	0.00849%
TODD COUNTY SCHOOL DIST 66-1	0.00281%
TOHONO O'ODHAM COMMUNITY COLLEGE	0.01567%
TWENTY-NINE PALMS BAND OF MISSION INDIANS	0.00726%
UGASHIK TRADITIONAL COUNCIL	0.00655%
UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA	0.02670%
UPPER COLUMBIA UNITED TRIBES	0.02918%
VIEJAS BAND OF MISSION INDIANS	0.00655%
WINNER SCHOOL DISTRICT 59-2	0.00281%
TOTAL	1.04259%

Ramah Navajo Chapter, et al., v. Jewell, No. 90-957 (D.N.M.)
Final Settlement Agreement
Appendix 3 – Claim Form

**RAMAH NAVAJO CHAPTER CLASS ACTION
SETTLEMENT CLAIM FORM**

The [name of Tribal Contractor] hereby claims the right to payment of
[filled in by Settlement Administrator]

\$ _____, as a compromise amount due and owing to the foregoing entity under the
[filled in by Settlement Administrator]

provisions of its agreements with the Bureau of Indian Affairs or the Office of Self-Governance that were in effect between the parties during fiscal years 1994 through 2013, which compromise amount was calculated pursuant to the terms set out in Appendix 2__to the Final Settlement Agreement in the *Ramah Navajo Chapter v. Jewell* class action. This claim is submitted pursuant to the provisions of § 110(a) and (d), and/or § 406(c) of the Indian Self-Determination and Education Assistance Act. This claim settles and resolves all claims identified in Section IV.A of the Final Settlement Agreement approved in *Ramah Navajo Chapter v. Jewell*, but does not include any claims specifically reserved in Section VI.B of the Final Settlement Agreement.

I hereby certify that the above claim is made in good faith, the supporting data are accurate and complete to the best of my knowledge, the amount requested reflects the compromise contract adjustment which I believe is due, and I am authorized to make this certification.

Name of Tribal Official

Signature

Date

[Title]