

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 96-1285 (RCL)
)	
v.)	
)	
GALE A. NORTON, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION FOR EXPEDITED CLARIFICATION
OR, IN THE ALTERNATIVE, MODIFICATION OF THE DECEMBER 23, 2002
ORDER TO FACILITATE IMPLEMENTATION OF SETTLEMENT IN *ASSINIBOINE
& SIOUX TRIBES OF THE FORT PECK RESERVATION v. UNITED STATES***

Defendants hereby move this Court to clarify or, in the alternative, to modify, on an expedited basis, this Court’s Order of December 23, 2002 (“Order”), which restricted communications between Defendants and class members “regarding this litigation or the claims involved therein, except as specifically permitted by order of th[e] Court.” Cobell v. Norton, 212 F.R.D. 14, 24 (D.D.C. 2002).¹ In support thereof, Defendants submit the following:

1. On December 23, 2002, this Court entered an Order that stated, in pertinent part, that

during the pendency of the instant litigation, the parties to the litigation, their agents and officials, and their counsel shall not communicate, through the United States mail or any other mode of communication, with any class member in this litigation regarding this litigation or the claims involved therein, except as specifically permitted by order of this Court. This restriction includes, but is not limited to, any communications that affect the rights of class

¹ On July 29, 2004, counsel for Defendants conferred with counsel for Plaintiffs regarding this motion. Counsel for Plaintiffs stated that they would not consent to the motion.

members to a full and accurate accounting of their Individual Indian Money trust accounts.

212 F.R.D. at 24.

2. On December 18, 1987, the Assiniboine and Sioux Tribes of the Fort Peck Reservation and five Fort Peck tribal members ("Fort Peck Plaintiffs") filed a complaint in the United States Court of Federal Claims ("CFC"), on behalf of themselves and similarly situated persons, seeking to recover interest earned on income generated from their Fort Peck Reservation trust properties while the income was held in Special Deposit Accounts ("SDAs")² and IMPL-Agency accounts.³ Assiniboine & Sioux Tribes of the Fort Peck Reservation v. United States (Cl. Ct. 1987) (No. 773-87L) (hereinafter "Fort Peck"). By order filed on January 8, 1999,⁴ the

² Special Deposit Accounts are temporary accounts for the deposit of funds that cannot immediately be credited to the proper recipient. SDAs are not Individual Indian Money ("IIM") accounts, but funds deposited in an SDA may later be distributed to an IIM account.

³ IMPL-Agency accounts were Treasury accounts established to hold a special category of revenue referred to as "Indian Moneys, Proceeds of Labor" ("IMPL"). Section 155 of Title 25 provides that

[a]ll miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor," and are made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by [25 U.S.C. §§ 123 and 142].

25 U.S.C. § 155. In 1981, Congress enacted a procedure to eventually close all IMPL accounts. Thus, 25 U.S.C. § 155b provides that "[n]o funds shall be deposited in such 'Indian money, proceeds of labor' (IMPL) accounts after September 30, 1982," and provides for the distribution of funds deposited before that date. 25 U.S.C. § 155b.

⁴ The January 8, 1999 order is attached as Exhibit 1.

CFC adopted the terms of a January 4, 1999 Stipulation and Settlement Agreement ("1999 Stipulation") between the parties,⁵ pursuant to which the Fort Peck Plaintiffs would accept payment from a settlement fund of approximately \$4 million as "full, complete and final resolution of plaintiffs' claims against the United States, legal or equitable." 1999 Stipulation at ¶ 6 (Ex. 2). The claims resolved by the 1999 Stipulation are "all claims arising out of interest earned on [plaintiffs'] trust funds while those funds were held in Special Deposit or other suspense accounts through September 30, 1981, the IMPL-Agency accounts and the disposition of funds in IMPL-Agency accounts under the Acts of December 23, 1981, P.L. 97-100, 95 Stat. 1391, 1400 and September 10, 1982, P.L. 97-257, 96 Stat. 818, 839." Id. at ¶ 5(b). The 1999 Stipulation provides that "[t]o the extent that the complaint might be read to include any other trust fund claims, such claims are dismissed without prejudice." Id.

3. The claims resolved by the 1999 Stipulation, although limited in scope and time, could arguably be viewed as relating to some of the accounting claims encompassed in the Cobell litigation. By order dated January 31, 2001,⁶ the CFC approved a Stipulation for Certification of Class, for Distribution of Award, and for Entry of Final Judgment ("2001 Stipulation"),⁷ and certified an opt-out class of individuals eligible to participate in the settlement ("Fort Peck Class"). The Fort Peck Class includes individual Indians who are also members of the Cobell class. On August 6, 2004, the CFC executed two notices⁸ – one for mailing and one for

⁵ The 1999 Stipulation is attached as Exhibit 2.

⁶ The January 31, 2001 order is attached as Exhibit 3.

⁷ The 2001 Stipulation is attached as Exhibit 4.

⁸ The notices provide information regarding the background of the case, the terms of the settlement, and the class members' rights to opt out of the settlement or file objections. A copy of each notice is attached at Exhibit 5.

publication – that will advise class members of the class action settlement. Under the 2001 Stipulation, as modified,⁹ the Department of the Interior (“Interior”) is to mail the notice to the members of the Fort Peck Class, and both parties will post the notice for publication.

4. Defendants respectfully move this Court to clarify that Interior would not violate the December 23, 2002 Order by communicating with the members of the Fort Peck Class in the context of the implementation of the CFC-approved settlement of the Fort Peck case including, but not limited to, mailing the notice of class action settlement to the members of the Fort Peck Class. The notice is a communication from the CFC rather than Interior, and is part of the implementation of a court-approved settlement of an action for money damages before, and within the jurisdiction of, the CFC as to specific claims.

5. In the alternative, if this Court determines that communication by Interior with the members of the Fort Peck Class for the purpose of implementing the Fort Peck settlement would violate the December 23, 2002 Order, Defendants request that the Order be modified, as necessary, to permit Interior to send the notice to members of the Fort Peck Class and otherwise implement the Fort Peck settlement.

6. Defendants request that the Court consider this motion on an expedited basis so that they are not placed in the untenable position of having to risk violating the order of one court to

⁹ The 2001 Stipulation provided that “[a]fter the Court has given preliminary approval to the list of class members, Counsel for Plaintiffs shall send notice to individuals identified by [the final list of class members], or if deceased, the individual’s estate” 2001 Stipulation at ¶ 4.a.(2) (Ex. 4). Subsequently, the United States agreed to undertake the task of mailing the notices, and the parties jointly moved the court to approve amendments to the Stipulation, which included changing the aforementioned language to substitute “Defendant, in consultation with Plaintiff” as the party who would send the notices. See Amendment to Paragraphs 4.a and 4.b. of the Stipulation for Certification of Class, for Distribution of Award, and for Entry of Final Judgment (filed March 19, 2004) (attached as Exhibit 6). The CFC approved the amendments by order filed on March 24, 2004 (attached as Exhibit 7).

comply with the order of another. On August 6, 2004, the CFC entered an order requiring that the "notices shall be mailed and published by the parties as contemplated in the notices and prior proceedings in this matter."¹⁰ Under the terms of the Fort Peck settlement and the schedule agreed upon by the parties and approved by the CFC, Interior is required to mail the notices to members of the Fort Peck Class no later than October 1, 2004 to ensure that the class members will have sufficient time to review the notices and mail exclusion requests or objections by the dates designated in the notices.

¹⁰ The August 6, 2004 order is attached as Exhibit 8.

CONCLUSION

For all of the above reasons, Defendants respectfully request that the Court clarify that the December 23, 2002 Order previously entered in this matter does not prohibit Defendants from carrying out the terms of the court-approved settlement entered in Assiniboine & Sioux Tribes of the Fort Peck Reservation v. United States, or, in the alternative, modify the December 23, 2002 Order to permit Defendants to carry out the terms of the settlement.

Dated: August 6, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 6, 2004 the foregoing *Defendants' Motion for Expedited Clarification or, in the Alternative, Modification of the December 23, 2002 Order to Facilitate Implementation of Settlement in Assiniboine & Sioux Tribes of the Fort Peck Reservation v. United States* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

In the United States Court of Federal Claims

No. 773-87L

(Filed: January 8, 1999)

**ASSINIBOINE AND SIOUX TRIBES
OF THE FORT PECK INDIAN
RESERVATION, ET AL.**

Plaintiffs

v.

THE UNITED STATES OF AMERICA

Defendant

ORDER

On January 4, 1999, the parties filed a document captioned: Stipulation and Settlement Agreement. The document contains paragraphs numbered 1 through 8. Paragraph 4 states: "Upon approval of the Court, judgment shall be entered against the United States and in favor of the Fort Peck Tribes and individual Indians having an interest in the claims in this case in the amounts stated in paragraph 3."

Disposition of plaintiffs' claims has been prolonged and the procedures involved have been complex. Pleadings included a complaint, filed December 18, 1987, and three amended complaints. Defendant filed answers to the First, Second, and Third amended complaints. The claim initially sought a full and complete accounting, and damages for loss of trust funds designated as "Indian Monies, Proceeds of Labor" (IMPL) in a class action as to all tribes and individual Indians with beneficial interests in IMPL funds. The class actions were never certified, and the case proceeded as a test case limited to claims applicable to Fort Peck reservation Tribes and Indians. Other time consuming complexities included discovery disputes, actions involving the Bureau of Indian Affairs (BIA), and sanctions under Rule 11 of this court.

During the period December 18, 1987, through October 8, 1998, docket entries reflect more than 240 actions related to preparation and consideration of this case. The following actions show background information:

EXHIBIT 1
Defendants' Motion for Expedited Clarification or, in the Alternative, Modification of the December 23, 2002 Order to Facilitate Implementation of Settlement in Assiniboine & Sioux Tribes of the Fort Peck Reservation v. United States

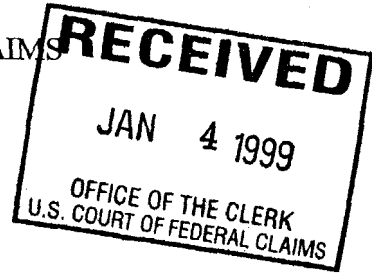
Order dated October 12, 1988; Memorandum of Decision and Order, January 4, 1989, 16 Ct.Cl. 158; Joint Statement on Test Cases filed February 8, 1989; Order dated March 20, 1989; Order dated September 27, 1989; Order dated November 13, 1992; Order dated October 28, 1993; Order dated March 9, 1994; Order dated July 20, 1994; Order dated April 11, 1995; Order dated September 30, 1996; Joint Report to Court filed October 8, 1998.

IT IS ORDERED:

1. The Stipulation and Settlement Agreement filed January 4, 1999, is accepted and paragraphs 1 through 8 are adopted in their entirety.
2. Pursuant to paragraph 4, the clerk is directed to enter judgment against the United States and in favor of the Fort Peck Tribes and individual Indians having an interest in the claims in this case in the amounts stated in paragraph 3.
3. Pursuant to paragraph 5(a), the clerk is directed to dismiss without prejudice claims of putative class members who were not made parties to this action.
4. Not later than 90 days after the entry of this order, the parties shall advise the court of the parties' recommendation on a process for distributing the damages awarded to the Fort Peck Tribe and affected individual Indians, and procedures for notice and joinder of individual Indians for purposes of settlement.


Kenneth R. Harkins, Senior Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS



Assiniboine and Sioux Tribes)
of the Fort Peck Reservation, et al.,)
))
Plaintiffs,)
))
v.)
))
The United States of America,)
))
Defendant.)
_____)

No. 773-87-L

SENIOR JUDGE HARKINS

STIPULATION AND SETTLEMENT AGREEMENT

The parties, through their respective counsel, hereby stipulate and agree to settle the claims in this case as follows:

1. The Assiniboine and Sioux Tribes of the Fort Peck Reservation and five Fort Peck tribal members brought suit on behalf of themselves and other similarly situated Indians having interests in trust property on the Fort Peck Reservation, against the United States to recover interest earned on their trust funds while those funds were in Special Deposit and IMPL-Agency accounts.

2. On April 11, 1995, the Court issued an order granting plaintiffs' motion for partial summary judgment and held the United States liable for any income from investments on the trust funds of the Fort Peck Tribes and individual Indians while those funds were held in Special Deposit and IMPL-Agency accounts. The Court further ordered the United States to produce an accounting from which the amounts due and owing to plaintiffs could be determined.

3. Following the Court's ruling on liability, the parties, with the assistance of their respective attorneys and consultants, undertook extensive work to locate and examine the accounting records relevant to determining the amounts due and owing to the Fort Peck Tribes and individual Indians. Based on careful consideration of the facts and law, the parties have agreed to a settlement of these Special Deposit and IMPL-Agency account claims as follows:

Defendant shall pay to the Fort Peck Tribes and individual Indians: (a) the sum of \$1,339,415.33, as agreed to by the parties representing interest earned on their trust funds while held in Special Deposit accounts at the Fort Peck Agency during the period August 13, 1946 through September 30, 1981 which sum shall be referred to as the principal indebtedness; (b) the sum of \$2,749,354.41 as agreed to by the parties representing interest on the principal indebtedness for the period from August 13, 1946 through July 31, 1998, plus the sum of \$364.27 in per diem interest on the principal indebtedness for each day commencing August 1, 1998 until the judgment is paid; (c) the sum of \$350,000 as agreed to by the parties representing the litigation costs and attorneys fees that the Fort Peck Tribes incurred to prosecute these claims.

4. Upon approval of the Court, judgment shall be entered against the United States and in favor of the Fort Peck Tribes and individual Indians having an interest in the claims in this case in the amounts stated in paragraph 3.

5. (a) While the complaint in this case contains class action allegations beyond Fort Peck, no class was ever certified and accordingly claims of putative class members who are not

made parties to this action shall be dismissed without prejudice.

(b) As to the plaintiffs in this case, the settlement resolves all claims arising out of interest earned on their trust funds while those funds were held in Special Deposit or other suspense accounts through September 30, 1981, the IMPL-Agency accounts and the disposition of funds in IMPL-Agency accounts under the Acts of December 23, 1981, P.L. 97-100, 95 Stat. 1391, 1400 and September 10, 1982, P.L. 97-257, 96 Stat. 818, 839. To the extent that the complaint might be read to include any other trust fund claims, such claims are dismissed without prejudice.

6. The payment of the amounts described in paragraph 3 shall constitute a full, complete and final resolution of plaintiffs' claims against the United States, legal or equitable. Plaintiffs agree to accept this payment as full, complete and final resolution of the claims asserted.

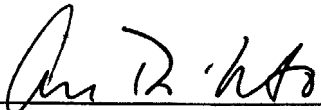
7. Not later than 90 days from the date of the Court's approval of this stipulation, the parties shall advise the Court of the parties' recommendation on a process for distributing the damages award to the Fort Peck Tribes and affected individual Indians, and procedures for notice and joinder of individual Indians for purposes of settlement.

8. This Agreement is the result of compromise and settlement and shall not be construed as an admission by Defendant of any legal or specific monetary liability as to any or all of plaintiffs' claims for damages, interest, attorneys fees and other litigation expenses, or any

other kind of monetary relief, nor shall the settlement be interpreted to constitute a precedent or argument in this or any other case.

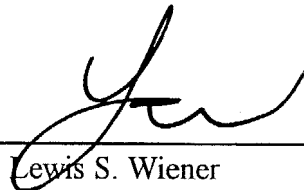
Dated: December 31, 1998

Assiniboine and Sioux Tribes of
the Fort Peck Reservation

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In the United States Court of Federal Claims

No. 773-87 L

(Filed: January 31, 2001)

ASSINIBOINE AND SIOUX TRIBES)
OF THE FORT PECK RESERVATION,)
ET AL.,)
Plaintiffs,)
v.)
THE UNITED STATES,)
Defendant.)

ORDER

Before the court is the parties' Joint Motion for Court Approval of Parties' Proposed Stipulation for Certification of Class, for Distribution of Award and for Entry of Final Judgment. The court has reviewed the filed documents and determined that the criteria for class certification are satisfied. See Taylor v. United States, 41 Fed. Cl. 440, 445 (1998); Quinnault Allottee Association v. United States, 453 F.2d 1272, 1276 (Ct. Cl. 1972). The court GRANTS the request for class certification and, based on the representation contained the parties' proposed stipulation, certifies an opt-out class. Further, the court APPROVES the proposed stipulation, which addresses procedures for: (1) notifying class members of the terms and amount of settlement; (2) distributing the settlement award; and (3) and paying attorneys' fees. Accordingly, the Clerk of the Court shall file the Stipulation for Certification of Class, for Distribution of Award, and for Entry of Final Judgment.

The parties anticipate an 18 month period of time is needed to complete the identification of individual Indians and to compute the allocable shares of the judgment. At least every 90 days, the parties shall file with the Clerk of the Court a status report informing the court of the progress in identifying individual Indians and performing the share computations of Federal Claims.

IT IS SO ORDERED.



EMILY C. HEWITT
Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Assiniboine and Sioux Tribes)
of the Fort Peck Reservation, et al.,)
))
Plaintiffs,)
))
v.)
))
The United States of America,)
))
Defendant.)
_____)

No. 773-87-L
JUDGE EMILY HEWITT

STIPULATION FOR CERTIFICATION OF CLASS, FOR DISTRIBUTION OF AWARD, AND FOR ENTRY OF FINAL JUDGMENT

Pursuant to this Court's Order of January 8, 1999 approving the parties' stipulation for settlement and the Judgment entered on January 12, 1999, the parties through their respective counsel, hereby further stipulate and agree, subject to the approval of this Court, to the following process for identification of the class of individual Indians having an interest in the judgment, for notice to and certification of that class, for distribution of the judgment to the Fort Peck Tribes and affected class of individual Indians, and entry of final judgment in the case.

1. Nature of the claims and terms of the settlement.

a. The Assiniboine and Sioux Tribes of the Fort Peck Reservation and five Fort Peck tribal members brought suit on behalf of themselves and other similarly situated Indians having interests in trust property on the Fort Peck Reservation, against the United States to recover interest earned on their trust funds while those funds were in Special Deposit and IMPL-Agency accounts.

b. On April 11, 1995, the Court issued an order granting Plaintiffs' motion for partial summary judgment and held the United States liable for any income from investments on the trust

funds of the Fort Peck Tribes and individual Indians while those funds were held in Special Deposit and IMPL-Agency accounts. The Court further ordered the United States to produce an accounting from which the amounts due and owing to Plaintiffs could be determined.

c. Following the Court's ruling on liability, the parties, with the assistance of their respective attorneys and consultants, undertook extensive work to locate and examine the accounting records relevant to determine the amounts due and owing to the Fort Peck Tribes and individual Indians. Based on careful consideration of the facts and the law, the parties agreed to a settlement of these Special Deposit and IMPL-Agency account claims. The settlement reflects the parties' best efforts to arrive at a figure most closely estimating the amount due and owing to the Fort Peck Tribes and individual Indians given the absence of complete records from which to make such determination. In reaching the settlement amount the parties applied principles of law and principles of accounting that provide for the resolution of any doubts or questions regarding the amount due in favor of the tribal and individual Indian trust beneficiaries. The terms of the settlement were submitted to and approved by the Court by order entered on January 8, 1999, pursuant to which the Clerk of the Court entered judgment on January 12, 1999. This Court's January 8, 1999 Order also directed the parties to "advise the court within 90 days of the entry of the Order of the parties' recommendation on a process for distributing the damages awarded to the Fort Peck Tribe and individual Indians, and procedures for notice and joinder of individual Indians for purposes of settlement." At the request of the parties, the Court has regularly extended this deadline. This stipulation sets forth the parties' recommendations as to distribution and joinder of parties.

d. Following the entry of the January 12, 1999 judgment in this case, on March 18, 1999, the sum of \$4,522,551.84 was deposited into a federal account to be held pending Court-ordered distribution. That sum represents interest earned on the trust funds of the Plaintiffs and of all individual Indians while held in the affected Special Deposit accounts maintained for the Fort Peck Agency during the period August 13, 1946 through September 30, 1981 plus interest on those sums to March 18, 1999, the date of deposit into the federal account, plus \$350,000 in litigation costs and attorneys fees incurred by the Fort Peck Tribes to prosecute the claims. The funds have been

invested and earning interest since the date of deposit in accord with the direction of the Fort Peck Tribes. The parties agree that in the circumstances of the case, such investments are prudent.

2. Methodology for allocation of judgment.

Since the entry of judgment, the parties have collected and reviewed the available relevant accounting records for the purpose of identifying a process for determining the allocable share of the judgment to the Fort Peck Tribes and class of affected individual Indians who can be identified, excluding the amount covering litigation costs and attorneys fees. The parties have exercised due diligence and used their best efforts to search for and identify the most complete set of accounting records available from which to identify and define the class of individual Indians entitled to share in the judgment and based on which an allocation of the judgment may be made. Based on careful consideration of all the facts and law, the parties have agreed that the Fort Peck Tribes' and each individual Indian's pro rata share of the judgment can be determined as follows:

a. (1) The best and most complete set of records available which provide information allowing the parties to identify and define the class of individual Indians entitled to share in the judgment and from which an allocation of the judgment may be made between the Fort Peck Tribes and the individual Indians, are two sets of documents known as journal vouchers and public vouchers which were contemporaneously prepared by federal officials to record the transfer of funds from special deposit accounts maintained for the Fort Peck Agency to the accounts of the Tribes, individual Indians, and other payees.

(2) The Defendant has located: (i) Journal vouchers for fiscal years 1967 through 1982 recording the transfer of moneys from the special deposit accounts maintained for the Fort Peck Agency to the Tribal accounts or individual Indian accounts; and (ii) public vouchers for fiscal years 1969 through 1982 recording the refund or payment of moneys from the special deposit accounts to the Tribes or to individual Indians. These vouchers cover 80 percent of the amount calculated in the settlement for the interest earned on special deposit accounts for the period of August 31, 1946

to March 31, 1981. Copies of these journal vouchers and public vouchers are now in the possession of the Indian Trust Accounting Division ("ITAD") of the United States General Services Administration Office of Finance.

(3) At the request of the parties, ITAD undertook a number of steps to determine whether any additional journal vouchers or public vouchers containing information relevant to the claims in this case might reasonably be located. Initially, ITAD researched these records in the early 1990s and more recently performed a supplemental records review between January 2000 through August 31, 2000. ITAD's review included examination of records lists from the Fort Peck Agency of the Bureau of Indian Affairs, the Billings Area Office of the Bureau of Indian Affairs, and the Office of the Special Trustee, Albuquerque, New Mexico. Some additional records relating to the post 1967 period were located during one of the most recent records search. However, many of the tribal and individual trust fund account records were not retained or have been lost or destroyed. This is particularly true for the journal voucher records from 1947 through 1966 and for the public vouchers from 1946 through 1968, which have not been located. The parties have concluded that all reasonable efforts to locate documents have been made and that further efforts to try and locate additional documents would likely be futile. In these circumstances, the parties have concluded that the substantial volume of records that have been located provide a fair and reasonable basis on which to make an allocation of the judgment in accord with law. See American Indians Residing on the Maricopa Ak-Chin Reservation v. United States, 667 F.2d 980, 1004-1005 (Ct.Cl. 1981).

b. (1) The journal vouchers and public vouchers that have been located and utilized provide, or lead to data which provides, the following information for each deposit made into those special deposit accounts: (i) the amount deposited, and (ii) the date deposited. The majority of the vouchers also include the identity (by account number or name) of the tribal, individual or other payee to whom the funds were ultimately transferred. All the foregoing information has been recorded in a computer database prepared by ITAD.

(2) The data derived from the journal vouchers and public vouchers has been used as follows: The amount of each deposit to the special deposit accounts has been multiplied by: (i) the number of days those funds were held on deposit in the special deposit account, commencing with the date of deposit but not earlier than October 1, 1966, to not later than March 31, 1981, and (ii) the interest rate(s) at which the BIA invested other Indian trust funds during the same time period – *i.e.*, the date of deposit to March 31, 1981. This computation results in a figure for each deposit made to the special deposit accounts which is referred to as the “imputed interest amount.”

c. The “imputed interest amount” for each deposit for the entire period will be divided by the total of all “imputed interest amounts” for the entire period to arrive at a percentage, or ratio, for each deposit to the special deposit accounts. These percentages, or ratios, shall be applied to the judgment amount to determine the dollar amounts to be allocated to the Fort Peck Tribes, each identified individual, and “Other” (as defined in subsection 2.d and 3.b below).

d. Based on the ongoing calculations described in paragraphs 2.a through 2.c, it has been estimated that as of December 31, 2000, the Fort Peck Tribes’ share of the judgment is 26.0 percent, and that the estimated share of individual Indians identified combined is 61.1 percent. The estimated remaining 12.9 percent designated as “Other” includes amounts attributable to individual Indians who have not been identified and amounts attributable to payees other than the Tribe and individual Indians.

e. Most of the journal vouchers and public vouchers contain information from which the identity of each individual Indian originally entitled to share in the judgment can be determined. Review of the journal vouchers and public vouchers and identification of the majority of the affected individuals will require at least an additional eighteen months time to complete. Defendant is prepared to proceed with the work necessary to identify the majority of the individual Indians originally entitled to share in the judgment once the terms of this stipulation are approved by the Court.

3. Process for identification of class of individual Indians and verification of Tribes' share

a. (1) Following approval of this stipulation by the Court, Defendant, through ITAD, shall continue to determine the names and IIM account numbers of the individual Indians whose accounts and names are identified by the journal vouchers and public vouchers examined under the procedures described in paragraphs 2.a through 2.e above, the dollar amount of each identified individual's interest in the judgment, and confirm the dollar amount of the Tribes' interest in the judgment. ITAD shall provide counsel for Plaintiffs and counsel for Defendant with monthly reports describing the progress of the work, including the number of vouchers processed, the number of vouchers remaining to be processed, and any problems encountered in identifying individuals.

(2) ITAD's monthly reports shall also include a list of the names and IIM account numbers of the individual Indians identified as of the date of such monthly report to be entitled to share in the judgment. With these preliminary lists, the plaintiff, Fort Peck Tribes, and Defendant shall determine a last known address for each such individual, and in the event any such individual is deceased, the case number for the decedent's estate in probate. This work shall be done jointly by plaintiff Fort Peck Tribes and Defendant – with each party using the records available to it in order to establish last known addresses and, if applicable, case numbers for estates in probate.

(3) As this work is underway, the parties shall provide the Court with periodic status reports at least every 90 days from the date of approval of this stipulation, or more frequently if matters arise that the parties determine should be brought to the attention of the Court.

b. ITAD will classify as "Other": (i) the pro-rata share of moneys allocated to individuals who cannot be identified because the journal vouchers or public vouchers fail to contain sufficient information from which the identity of individual Indians can be determined; and (ii) the pro-rata share of moneys due to payees other than the Tribes or the individual Indians.

4. Process for notice of class certification and joinder of individual Indians

a. (1) Upon completion of the work necessary to identify the individuals and to confirm the Tribes' allocable share of the judgment amount, a final list of the names and IIM account numbers of the individuals and the amount of each individual's allocable share in the judgment, along with the final determination of the amount of the Tribes' allocable share in the judgment, shall be provided by ITAD to counsel for Plaintiffs and counsel for Defendant. Counsel for Plaintiff shall then submit this information to the Court for preliminary approval. The parties stipulate that the individual Indians identified by ITAD and as submitted to the Court, constitute the group entitled to share in the settlement sum and are requesting the Court by separate motion to certify that group as a class under Rules of the United States Court of Federal Claims, the members of which will have the option to exclude themselves from the class.

(2) After the Court has given preliminary approval to the list of class members, Counsel for Plaintiffs shall send notice to individuals identified by ITAD's final list, or if deceased, the individual's estate, in accord with a form of notice (attached hereto as Exhibit A). The notice to each individual class member shall generally describe the nature of the claim, the basis on which the claim was settled, the individual's eligibility to share in the judgment and the amount of the individual's share. The notice shall further explain that an individual may chose to be excluded from the class entitled to shares of the settlement, and shall state that individuals who wish to exclude themselves from the class must send to counsel for Plaintiffs the completed form (attached hereto as Exhibit B), or some other written directive clearly requesting exclusion from the settlement, by a deadline that is sixty (60) days after the date of the notice. The notice shall state that individuals who do not timely elect to exclude themselves from the case and who receive a portion of the final judgment shall be deemed to be joined as Plaintiffs to the case and bound by the terms of the settlement. The notice shall further set a deadline, by which any individual who does not elect to be excluded from the settlement, but who wishes to make objection to the amount of the settlement determined to be due to that individual, should submit such objection in writing to counsel for Plaintiffs, to occur fifteen (15) business days after the deadline for opting out of the settlement.

(3) Counsel for Plaintiffs shall also cause notice of the settlement to be published in accord with a form of notice (attached hereto as Exhibit C), in newspapers of general circulation on the Fort Peck Reservation, namely the Wotanin Wowapi, Indian Country Today, News from Indian Country, Great Falls Tribune, and Billings Gazette, and posted in the Tribal offices. Counsel for Defendant shall also cause copies of the notice to be posted at BIA agencies and Indian Health Service Facilities nationwide.

b. Within 15 days following the expiration of the deadline by which individuals may make objections, counsel for Plaintiffs shall file with the Court and serve on Defendant, a notice advising of the expiration of the deadlines, the identity of the class members to whom notice was sent, the identity of the class members who are deceased, the identity of the class members who opted out of the settlement, and submit all written objections which may have been made.

c. In the event that objections are made, the Court shall in its discretion schedule a hearing or establish such other procedures as appropriate to address the merits of such objections. Counsel for Plaintiffs and for the Defendant shall be prepared to respond to objections made, and to provide information as appropriate bearing on the merits of the objection. Counsel shall not be expected or required to provide privileged information or attorney work product in responding to any objections or inquiries.

d. Following adjudication of objections, or if no objections are made, the Court shall enter a final order identifying the individual Indians entitled to share in the judgment as members of the class and the amount of each individual's allocable share in the judgment, and authorizing distribution to such individuals. The final order shall further provide for entry of final judgment in the case.

5. Distribution of the judgment

a. Within 10 business days after approval of this stipulation by the Court the Defendant shall deposit into a trust account established by the Department of the Treasury and the Department of the Interior for the benefit of the Fort Peck Tribes ("Ft. Peck Tribal Trust Account") and subject to distribution under the Use and Distribution of Judgment Funds Act, 25 U.S.C. §§ 1401, *et seq.*, the sum of \$643,186.73 which amount reflects approximately 50% of the Fort Peck Tribes' estimated 26 percent share of the judgment as of March 18, 1999, (\$587,931.74) plus the estimated Tribes' pro rata share of interest earned on that sum from March 18, 1999 to December 31, 2000 (\$53,094.32) plus the estimated Tribes' pro rata share of capital gains earned on that sum from March 18, 1999 through December 31, 2000 (\$2,160.67).

b. Within 10 business days after approval of this stipulation by the Court, the Defendant shall, out of the \$350,000 allocated for litigation costs and attorneys fees, pay to the Fort Peck Tribes \$114,421.30 which amount represents the sum paid by the Fort Peck Tribes in prosecuting these claims, and pay to Plaintiffs' attorneys, Sonosky, Chambers, Sachse, Endreson & Perry the sum of \$235,578.70 which represents the costs and attorney fees incurred prior to the date of judgment but not yet paid.

c. Beginning within 40 days and completed no later than 90 days after the Court's final order approving the identity of individual Indians class members entitled to share in the judgment and the Clerk's entry of a final judgment, as described in paragraph 4.d above, and provided no appeal has been taken, the Defendant shall:

(1) Issue to each individual Indian who has been identified as entitled to share in the judgment and certified as a class member, and who has not opted out of the settlement, a Treasury check in the amount of that individual's pro rata share of the judgment, except that payment shall be made into IIM accounts for those affected individual Indians that are eligible for IIM accounts pursuant to 25 CFR Part 115 (1999). In the event that an individual entitled to share in the

judgment as a class member is deceased, that individual's share shall be paid to his or her estate for distribution to the individual's heirs in accord with the orders or decisions probating that estate pursuant to 25 CFR part 15 (1999) or other applicable law.

(2) Deposit into the Ft. Peck Tribal Trust Account, (i) the balance of the sum due to the Tribes representing the final determination of the Tribes' percent share of the judgment as of March 18, 1999, plus the Tribes' pro rata share of interest earned on that sum from March 18, 1999 to the date of payment to the Tribes as determined pursuant to sections 2 and 4.a(1) of this Stipulation, (ii) plus the Tribes' pro rata share of interest earned on the sum previously paid into the Tribes' trust account in accordance with and pursuant to paragraph 5.a of this Stipulation, and earned from January 1, 2001 to the date of payment of that sum. These funds may be used by the Tribes in accordance with the plan adopted by the Tribes under the Use and Distribution of Judgment Funds Act, 25 U.S.C. §§ 1401 as provided by section 5.a of this Stipulation.

d. If any individual Indian opts out of the certified class entitled to share in the settlement, then the proportional share of such individuals opting out of the class shall be retained in an interest-bearing account in Treasury until the disposition of any objection including expiration of all appeals, or for six years following distribution of the judgment whichever is later. These moneys will be held as a fund from which, subject to approval of the Court, payment may be made to pay Individual Indians not bound by the settlement who file successful action(s) against the United States for claims for interest due on funds held in Special Deposit accounts maintained for the Fort Peck Agency. If, at the end of this six year period, none of the individuals opting out of the settlement, nor any other individual claiming entitlement to relief, have instituted any action to prosecute their claims, those funds shall, upon written request by the Fort Peck Tribes to Defendant, be paid to the Fort Peck Tribes as set forth in sub-paragraph g below.

e. If any check issued to any individual pursuant to section 5.c is not deposited or is returned due to the individuals' whereabouts being unknown, those moneys shall be deposited in a Fort Peck whereabouts unknown account (to be established at the time the checks are returned).

Defendant shall undertake to locate such individuals in the same manner as is generally done for other payments to individual Indians. If, at the end of this six year period, none of the class members whose whereabouts are unknown has claimed their share of the settlement, nor any other individual claiming entitlement to relief has instituted any action to prosecute their claims, those funds shall, upon written request by the Fort Peck Tribes to Defendant, be paid to the Fort Peck Tribes as set forth in sub-paragraph g below.

f. The proportional shares allocated to "Other" shall be retained in an interest-bearing for six years following distribution of the judgment. These moneys will be held as a fund from which, subject to approval of the Court, payment may be made to pay Individual Indians not bound by the settlement who file successful action(s) against the United States for claims for interest due on funds held in Special Deposit accounts maintained for the Fort Peck Agency. If, at the end of this six year period, none of the individuals opting out of the settlement, nor any other individual claiming entitlement to relief, has instituted any action to prosecute their claims, those funds shall, upon written request by the Fort Peck Tribes to Defendant, be paid to the Fort Peck Tribes as set forth in sub-paragraph g below.

g. If civil actions against the United States by individual Indians for claims for interest due on funds held in Special Deposit accounts maintained for the Fort Peck Agency are filed in court within the six year period, the moneys referred to in sub-paragraphs d through f above shall continue to be retained in an interest-bearing account until final resolution of such actions. Upon final resolution of such civil actions, Defendant shall provide the Tribes with written notice of the disposition of any such civil action, whereupon the Tribes may then file a written request for the money remaining in the account. After receipt of the Tribes' written request, any remaining funds shall be paid to the Fort Peck Tribes as authorized by the Use and Distribution of Judgment Funds Act, 25 U.S.C. §§ 1401 ("Judgment Funds Act"), or other applicable law.

6. Character of Funds The funds being distributed in this action pursuant to this stipulation are trust income to the Tribes and individual Indians.

7. Court approval.

a. The Court's approval of this stipulation shall constitute approval of the parties' recommendations regarding the methodology for allocating the judgment and identification of individual Indians, certification of the class, the process by which individual Indians shall be notified of their right to share in the judgment, and the procedures for hearing any objections made as may be established by the Court. The Court's approval of this stipulation shall also serve to authorize distribution of the Fort Peck Tribes' share and payment of attorneys fees as provided in sections 5.a and 5.b above.

b. The parties intend that the Court's final order approving the identity of individuals entitled to share in the judgment, as provided in section 4.d above, their certification as a class under Rule 23, and the entry of the final judgment, shall serve to join those individuals as Plaintiffs in this action, shall authorize distribution of their allocable share of the judgment, and bind the class to the judgment in this action.

8. Final Judgment and Continuing Jurisdiction.

a. The settlement resolves all claims arising from interest earned on the Tribal trust funds while those funds were held in (1) Special Deposit or other suspense accounts through September 30, 1981; (2) the IMPL-Agency accounts; and (3) the disposition of funds in IMPL-Agency accounts pursuant to the Acts of December 23, 1981, P.L. 97-100, 95 Stat. 1391, 1400 and September 10, 1982, P.L. 97-257, 96 Stat. 818, 839. After the Court certifies the members of the class entitled to share in the judgment, as provided in section 4.d above, it will be appropriate for the Clerk to enter final judgment in the case. To the extent that the complaint in this action might be read to include any other trust fund claims, such claims are to be dismissed without prejudice.

b. The distribution of the funds to the Fort Peck Tribes and to the certified class of individual Indians who do not opt out of the settlement, pursuant to paragraphs 5. a to 5. c above,

shall constitute a full, complete and final resolution of the Tribes' and all such individual Indians' claims against the United States, legal or equitable. The Tribes and all individual Indians identified in the certified class who do not opt out of such class, agree to accept this payment as full, complete and final resolution of the claims asserted in this case.

c. The Court should retain jurisdiction over this matter until all appeal times have passed, and all the funds have been distributed as described in paragraphs 2 through 5.

Dated: January 19, 2001

Assiniboine and Sioux Tribes of
the Fort Peck Reservation

United States of America

By: Anne D. Noto by Silvia Sepulveda-Hambor.

Anne D. Noto
Sonosky, Chambers, Sachse,
Endreson & Perry
1250 Eye Street, N.W.
Suite 1000
Washington, D.C. 20005
(202) 682-0240
Counsel for Plaintiffs

By: Silvia Sepulveda-Hambor.

Silvia Sepulveda-Hambor
United States Department of Justice
Environmental & Natural Resources
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
(202) 305-0456
Counsel for Defendant

Of counsel:
David Moran, Attorney
Karen Lindquist, Attorney
United States Department of the Interior
Office of the Solicitor
1849 C Street, N.W
Washington, D.C. 20240
(202) 208-4361

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Assiniboine and Sioux Tribes)	
of the Fort Peck Reservation, et al.,)	
)	No. 773-87-L
Plaintiffs,)	
)	
v.)	JUDGE EMILY C. HEWITT
)	
The United States of America,)	
)	
Defendant.)	

Notice of Class Action and Settlement of Litigation

THIS NOTICE MAY AFFECT YOUR RIGHTS
PLEASE READ CAREFULLY

This notice has been sent to you because you have been identified as a member of the class of persons having an interest in this lawsuit. A settlement of this litigation has been reached. You have been identified as eligible to participate in the lawsuit and receive a portion of the settlement. If you wish to participate as a member of the class and share in the settlement funds, you do not need to take any further steps to receive your share of the settlement. If, however, you do not want to participate in the case, you must take certain steps, described in section 3 below, to be excluded from the class.

The purpose of this notice is to inform you of the claims raised in this lawsuit, the terms of the proposed settlement of this lawsuit, the rights you may have in connection with the settlement, and what steps you may take in relation to the settlement and this class action litigation.

1. Summary of Litigation Settlement and Class Certification

The Assiniboine and Sioux Tribes of the Fort Peck Reservation and five Fort Peck tribal members brought the lawsuit on behalf of themselves and other similarly situated Indians having interests in trust property on the Fort Peck Reservation, against the United States to recover interest earned on trust funds while those funds were in Special Deposit and IMPL-Agency accounts maintained for the Fort Peck Agency of the Bureau of Indian Affairs during the period August 13, 1946 through September 30, 1981. On April 11, 1995, the Court of Federal Claims issued a decision in favor of the Fort Peck Tribes and the individual Indian plaintiffs. The Court found the United States liable for any income from investments on the trust funds of the Fort Peck Tribes and individual Indian plaintiffs while those funds were held in Special Deposit and IMPL-Agency

accounts maintained for the Fort Peck Agency. The Court further ordered the United States to produce an accounting from which the amounts due and owing to the Fort Peck Tribes and individual Indian plaintiffs could be determined.

Following the Court's 1995 decision, the Fort Peck Tribes and the United States, with the assistance of their attorneys and accounting consultants, undertook extensive work to locate and examine the accounting records relevant to determining the amounts due to the Fort Peck Tribes and all individual Indians whose trust funds were held in Special Deposit and IMPL-Agency Accounts at the Fort Peck Agency. Based on careful consideration of the facts and the law, the parties agreed to a settlement of the Special Deposit and IMPL-Agency account claims, which covers the Fort Peck Tribes and all individual Indians whose trust funds were held in Special Deposit or IMPL-Agency accounts maintained for the Fort Peck Agency. The settlement reflects the parties' best efforts to arrive at a figure most closely estimating the amount due and owing to the Fort Peck Tribes and individual Indians whose trust funds were in Special Deposit and IMPL-Agency accounts maintained for the Fort Peck Agency given the absence of complete records from which to make such determination. In reaching this settlement, the parties applied principles of law and principles of accounting so that any doubts or questions about the records were resolved in favor of the tribal and individual Indian trust beneficiaries.

The parties believe that the settlement is fair and reasonable. The Court has reviewed the settlement and has also determined that it is fair and reasonable. The terms of the settlement were submitted to and approved by the Court by order entered on January 8, 1999, and a judgment entered on January 12, 1999. By Orders entered on January 31, 2001 and March 24, 2004, the Court approved a plan for distribution of the moneys to the individual Indians identified pursuant to a method also approved by the Court, and certified the identified individual Indians as an "opt out" class under Rule 23 of the Rules of the U.S. Court of Federal Claims. You are one of the individual Indians included in the certified class.

Following the entry of the January 12, 1999 judgment in this case, on March 18, 1999, the sum of \$4,522,551.84 was deposited into a federal account to be held pending Court-ordered distribution. That sum represents interest earned on trust funds while held in the affected Special Deposit and IMPL-Agency accounts maintained for the Fort Peck Agency during the period August 13, 1946 through September 30, 1981 plus interest on those sums to March 18, 1999 the date of deposit into the federal account, plus \$350,000 in litigation costs and attorneys fees incurred by the Fort Peck Tribes to prosecute the claims. The funds have been invested and earning interest since the date of deposit.

Since the entry of January 12, 1999 judgment, the parties have collected and reviewed the available relevant accounting records for the purpose of identifying a process for determining the allocable share of the judgment to the Fort Peck Tribes and class of affected individual Indians, excluding the amount covering litigation costs and attorneys fees. Based on careful consideration of all the facts and law, the parties have agreed that the pro rata shares of the judgment of the Fort Peck Tribes and of the individual Indians whose funds were in Special Deposit and IMPL-Agency

accounts maintained for the Fort Peck Agency can be determined based on an analysis of certain federal records – known as journal vouchers and public vouchers – which were contemporaneously prepared by federal officials to record the transfer of funds from special deposit accounts maintained for the Fort Peck Agency to the accounts of the Tribes, individual Indians, and other payees. These accounting records, which cover a time period from 1967 to 1981 provide information from which individual Indians having an interest in the settlement may be identified, and the Tribes' and individual Indians' proportionate share of the settlement calculated.

2. Your interest in the settlement

Based on review of these accounting records, the parties have determined that, as a member of the class, you are eligible to share in the judgment, and that your share is set out in the Statement that is attached to this notice

3. Your rights to elect whether to participate in or be excluded from the lawsuit

You have a right to elect whether or not to remain a member of the class for purposes of participating in the settlement of this lawsuit. Choosing either to remain a member of the class or to opt out of the class will impact your rights as set forth below.

- A. If you want to be excluded from the class, you must complete the enclosed form (“Exclusion Request”) and return it to counsel for the plaintiffs, Sonosky, Chambers, Sachse, Endreson & Perry, LLP, 1425 K Street, N.W., Suite 600 Washington D.C. 20005, Attention Fort Peck IMPL Lawsuit, by first class mail no later than December 3, 2004.

By making this selection to be excluded you (1) will **not** share in any recovery that may be paid to class members as a result of the settlement of this lawsuit, and (2) will not be bound by the settlement.

- B. If you want to remain a member of the class and participate in the settlement, including receiving a share of the money involved in the settlement, you need do nothing. You do **NOT** need to file the enclosed “Exclusion Request,” or any other document evidencing your consent to remain within the class. By remaining a class member, any claims against the United States alleged as a result of the United States’ failure to pay interest on trust funds while held in Special Deposit accounts maintained for the Fort Peck Agency during the period through September 30, 1981, as alleged by the Fort Peck Tribes and individual Indians as plaintiffs, will be resolved in this case and cannot be presented in any other lawsuit at any other time. Some members of the class in this case may also be members of the class in a separate case, Cobell v. Norton, No. 1:96CV01285(D.D.C.). If you remain a member of the class and accept your payment as part of the class in this case, that will not affect your membership in the plaintiff class in the Cobell case, and will not affect

any rights you may have as a class member in the Cobell case for claims that were not resolved in this case

- C. If you do not elect to be excluded from the settlement, but you wish to make an objection to the amount of the settlement that has been determined to be due to you, you should submit your objection in writing to counsel for plaintiffs Sonosky, Chambers, Sachse, Endreson & Perry, LLP, 1425 K Street, N.W., Suite 600, Washington D.C. 20005, Attention: Fort Peck IMPL Lawsuit, by first class mail no later than December 17, 2004. If objections are made, they will be submitted to the Court of Federal Claims for evaluation by the Court.

4. Further Proceedings

By January 14, 2005 counsel for plaintiffs will file with the Court of Federal Claims, a notice to inform the Court of the identity of each member of the class to whom notice was sent, and the identity of each individual who has opted out of the class for purposes of settlement. Counsel for the plaintiffs will also submit to the Court all written objections which may have been made by any class member.

If written objections have been made, the Court may, in the Court's discretion, schedule a hearing or establish some additional procedures, as appropriate, to address the merits of such objections. Following the Court's decision on objections, or if no objections are made, the Court will enter a final order and final judgment identifying the individual Indians members of the class entitled to share in the judgment and authorizing distribution to such individuals as set forth therein. The Order will provide that upon payment of the moneys to the class members as set forth below, the claims of the plaintiffs and plaintiff class members will constitute full, complete and final resolution of the claims asserted in this case.

Between 40 days and 90 days after the Court's final order and final judgment, and provided no appeal has been taken, the United States will issue to each individual Indian member of the certified class who has not asked to be excluded from the class, a Treasury check in the amount of that individual's pro rata share of the judgment. The checks will be mailed to the last known address of each class member ascertained by the parties in accordance to a procedure approved by the Court. However, payment will be made into an IIM (Individual Indian Money) account for those affected individual Indians that are eligible for IIM accounts as provided by federal regulations. In the event that an individual entitled to share in the judgment is deceased, that individual's share will be paid to his or her estate for distribution to the individual's heirs in accord with the orders or decisions probating that estate.

5. Additional Information

This notice is a summary of the case and the settlement, and does not describe all of the details. Any questions you have about the matters contained in this Notice, and any corrections or changes concerning your name or mailing address should be directed in writing to the attorneys for

the plaintiffs, Sonosky, Chambers, Sachse, Endreson & Perry, LLP, 1425 K Street, N.W., Suite 600, Washington D.C. 20005, Attention: Fort Peck IMPL Lawsuit.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE. THE CLERK IS NOT ABLE TO PROVIDE ANY INFORMATION OR ADVICE REGARDING THIS NOTICE.

If you decide to remain a member of the class and wish to communicate with the attorneys for plaintiffs in this litigation, you may do so by writing or calling Anne D. Noto, at Sonosky, Chambers, Sachse, Endreson & Perry, LLP, 1425 K Street, N.W., Suite 600 Washington D.C. 20005, telephone 202-682-0240.

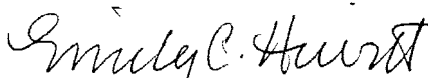
You may, of course, seek the advice and guidance of your own attorney if you desire. The pleadings and other records in the litigation may be examined and copied, at your expense, at any time during regular office hours at the offices of the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington D.C. 20005.

6. Reminder as to Time Limits

IF YOU WISH TO BE EXCLUDED FROM THE CLASS ON WHOSE BEHALF THIS ACTION IS BEING MAINTAINED, YOU MUST RETURN THE COMPLETED "EXCLUSION REQUEST" TO SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY, LLP, 1425 K STREET, N.W., SUITE 600, WASHINGTON D.C. 20005, ATTENTION: FORT PECK IMPL LAWSUIT, BY FIRST CLASS MAIL POSTMARKED ON OR BEFORE DECEMBER 3, 2004.

IF YOU WISH TO REMAIN A MEMBER OF THE CLASS BUT WANT TO OBJECT TO THE SETTLEMENT, YOU MUST SEND YOUR WRITTEN OBJECTION TO SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY, LLP, 1425 K STREET, N.W., SUITE 600, WASHINGTON D.C. 20005, ATTENTION: FORT PECK IMPL LAWSUIT, BY FIRST CLASS MAIL POSTMARKED ON OR BEFORE DECEMBER 17, 2004.

Dated: August 6, 2004



Emily C. Hewitt, Judge
U.S. Court of Federal Claims

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Assiniboine and Sioux Tribes)	
of the Fort Peck Reservation, et al.,)	
)	No. 773-87-L
Plaintiffs,)	
v.)	JUDGE EMILY C. HEWITT
The United States of America,)	
)	
Defendant.)	
_____)		

Exclusion Request

READ THE LEGAL NOTICE TO WHICH THIS FORM IS ATTACHED CAREFULLY BEFORE FILLING OUT THIS FORM. THIS FORM NEED NOT AND SHOULD NOT BE FILLED OUT IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT THAT HAS BEEN APPROVED IN THIS CASE.

The undersigned does NOT wish to be a member of the plaintiff class in the case of Assiniboine and Sioux Tribes of the Fort Peck Reservation, et al v. the United States of America, No. 773-87-L, before the United States Court of Federal Claims.

Dated this ____ day of _____, 200__

Signature

Print Name of Person Signing

Address

If you want to exclude yourself from the class, you must fill in and return this form by first class mail on or before December 3, 2004 to:

Sonosky, Chambers, Sachse, Endreson & Perry, LLP
1425 K Street, N.W., Suite 600
Washington D.C. 20005
Attention: Fort Peck IMPL Lawsuit

A separate request for exclusion should be completed and timely mailed for each individual electing to be excluded from the settlement class.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Assiniboine and Sioux Tribes)
of the Fort Peck Reservation, et al.,)
) No. 773-87-L
Plaintiffs,)
v.) JUDGE EMILY C. HEWITT
The United States of America,)
)
Defendant.)
_____)

Statement of Your Share in the Settlement of
Assiniboine and Sioux Tribes of the Fort Peck Reservation, et al. v. United States of America,
No. 773-87-L (U.S. Court of Federal Claims)

To: _____ *Name*

_____ *Address*
_____ *IIM account number*

As stated in the foregoing notice issued by the Court of Federal Claims in this case, your share of the settlement of this litigation is \$ _____. This amount is calculated as of _____, 2004. This sum is being invested and will continue to earn interest which will be added to the amount stated above and paid to you following final approval of payment by the Court.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Assiniboine and Sioux Tribes)	
of the Fort Peck Reservation, et al.,)	
)	No. 773-87-L
Plaintiffs,)	
)	
v.)	JUDGE EMILY C. HEWITT
)	
The United States of America,)	
)	
Defendant.)	
_____)	

THIS NOTICE MAY AFFECT YOUR RIGHTS
PLEASE READ CAREFULLY

TO: All individual Indians beneficially owning income-producing trust property on the Fort Peck Indian Reservation, which income may have been held in Special Deposit Accounts maintained for the Fort Peck Agency of the Bureau of Indian Affairs.

Your rights may be affected by the settlement of a lawsuit pending in this Court, Civil Action No. 773-87-L, entitled Assiniboine and Sioux Tribes of the Fort Peck Reservation, et al v. the United States of America, No. 773-87-L.

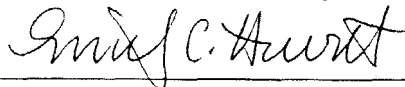
The Assiniboine and Sioux Tribes of the Fort Peck Reservation and five Fort Peck tribal members brought the lawsuit on behalf of themselves and other similarly situated Indians having interests in trust property on the Fort Peck Reservation, against the United States to recover interest earned on their trust funds while those funds were in Special Deposit and IMPL-Agency accounts maintained for the Fort Peck Agency during the period August 13, 1946 through September 30, 1981.

The Fort Peck Tribes and the United States have agreed to a settlement of this case. Under the settlement, the United States has paid \$4,522,551.84 into an account which is now held in Treasury. Pro rata shares of this sum are to be allocated to the Fort Peck Tribes and the class of identified individual Indians based on federal accounting records which record the transfer of funds from special deposit accounts maintained for the Fort Peck Agency to the accounts of the Tribes, individual Indians, and other payees.

The Court has approved the settlement, the certification of a class of individual Indians who have been identified as eligible to share in the settlement, and the plan for allocating the settlement sum between the Tribes, and the individual Indians who are members of the certified class. Persons who have been identified as members of the certified class are being advised by

mail of their rights with respect to this lawsuit (including the right of class members to exclude themselves from the class if they desire) and the full terms and conditions of the proposed settlement. This notice is being published because some class members may not receive the mailed notice. If you believe you may be a member of the certified class, or if you are currently a named plaintiff in the suit, but have not received a mailed notice of your rights by October 12, 2004, you are requested to notify the law firm of Sonosky, Chambers, Sachse, Endreson & Perry, LLP, 1425 K Street, N.W., Suite 600, Washington, D.C. 20005, Attention: Fort Peck IMPL Lawsuit, giving your full name and current mailing address. You will then be mailed information: a) on whether you are eligible to participate in this the settlement of this litigation as a member of the certified class, and b) if you are a member of the certified class eligible to participate, more detailed information about the lawsuit and the terms of the settlement. If you are a class member, you will also be placed on the mailing list for any future notifications regarding this suit.

Dated: August 6, 2004



Emily C. Hewitt, Judge
U.S. Court of Federal Claims

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Assiniboine and Sioux Tribes)
of the Fort Peck Reservation, et al.,)
)
Plaintiffs,)
)
v.)
)
The United States of America,)
)
Defendant.)
_____)

No. 773-87-L
JUDGE EMILY HEWITT

RECEIVED
OVER THE COUNTER

MAR 19 2004

THE OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

**AMENDMENT TO PARAGRAPHS 4.a AND 4.b OF THE
STIPULATION FOR CERTIFICATION OF CLASS, FOR DISTRIBUTION
OF AWARD, AND FOR ENTRY OF FINAL JUDGMENT**

Pursuant to this Court's Order of January 8, 1999 approving the parties' stipulation for settlement and the Judgment entered on January 12, 1999, the parties through their respective counsel on January 20, 2001 submitted to the Court a joint stipulation setting out the process for identification of the class of individual Indians having an interest in the judgment, for notice to and certification of that class, for distribution of the judgment to the Fort Peck Tribes and affected class of individual Indians, and entry of final judgment in the case. By order entered on January 31, 2001, the Court approved that stipulation.

The parties have completed the work set out in paragraph 3 of the January 20, 2001 Stipulation. In the course of completing that work, the parties determined that some revisions should be made to the remaining procedures that would: 1) allow for the list provided to the Court to present the Tribes' and each individual's share as a percentage and to clarify the respective roles of the

Indian Trust Accounting Division of the General Accounting Office and the Office of Trust Funds Management of the Department of the Interior in preparing the list; 2) provide that the list be filed under seal to protect the privacy right of individuals; 3) state that Defendant will cause the notices to be sent to the individuals, as Defendant, through the Department of the Interior Office of Trust Funds Management, has the facilities to handle a mailing of this kind; 4) provide for publication of notices in additional newspapers serving Indian country; and 5) revise the notices to be sent to the class members and for publication (Exhibits A and B to this stipulation) to correct the mailing address for Counsel for Plaintiff on those notices. The parties hereby stipulate, subject to the approval of the Court, that paragraph 4.a and 4.b be corrected to read as follows:

4. Process for notice of class certification and joinder of individual Indians

a. (1) Upon completion of the work necessary to identify the individuals and to confirm the Tribes' allocable share of the judgment amount, a final list of the names and IIM account numbers of the individuals and the amount of each individual's allocable share in the judgment expressed as a percentage, along with the final determination of the ~~amount of the~~ Tribes' allocable share in the judgment expressed as a percentage, shall be provided by ITAD to counsel for Plaintiffs and counsel for Defendant and the Defendant's Office of Trust Fund Management within the Department of the Interior (OTFM). OTFM will consolidate the information provided by ITAD with the information compiled by the parties regarding individuals' last known addresses and information identifying individuals who are deceased. Counsel for Plaintiff shall then submit this information to the Court for preliminary approval. The list shall be provided to the Court under seal to protect the privacy rights of individual Indians in the confidentiality of their account numbers and percent interest in the judgment. The parties stipulate that the individual Indians identified by ITAD and as submitted to the Court, constitute the group entitled to share in the settlement sum and in accord with the Court's order of January 31, 2001 ~~are requesting the Court by separate motion to~~ certifying that group as a class under Rules of the United States Court of Federal Claims, the members of which will have the option to exclude themselves from the class.

(2) After the Court has given preliminary approval to the list of class members, Defendant, in consultation with Plaintiff Counsel for Plaintiffs shall send notice to individuals identified by ITAD's final list, or if deceased, the individual's estate, in accord with a form of notice (attached hereto as Exhibit A). The notice to each individual class member shall generally describe the nature of the claim, the basis on which the claim was settled, the individual's eligibility to share in the judgment and the amount of the individual's share. The notice shall further explain that an individual may chose to be excluded from the class entitled to shares of the settlement, and shall state that individuals who wish to exclude themselves from the class must send to counsel for Plaintiffs the completed form (attached hereto as Exhibit B), or some other written directive clearly requesting exclusion from the settlement, by a deadline that is sixty (60) days after the date of the notice. The notice shall state that individuals who do not timely elect to exclude themselves from the case and who receive a portion of the final judgment shall be deemed to be joined as Plaintiffs to the case and bound by the terms of the settlement. The notice shall further set a deadline, by which any individual who does not elect to be excluded from the settlement, but who wishes to make objection to the amount of the settlement determined to be due to that individual, should submit such objection in writing to counsel for Plaintiffs, to occur fifteen (15) business days after the deadline for opting out of the settlement.

(3) Counsel for Plaintiffs shall also cause notice of the settlement to be published in accord with a form of notice (attached hereto as Exhibit C), in newspapers of general circulation on the Fort Peck Reservation, namely the Wotanin Wowapi, Indian Country Today, News from Indian Country, Great Falls Tribune, the MHA Times, the Teton Times and Billings Gazette, and posted in the Fort Peck Tribal offices. Counsel for Defendant shall also cause copies of the notice to be posted at BIA agencies and Indian Health Service Facilities nationwide.

b. Within 15 days following the expiration of the deadline by which individuals may make objections, counsel for Plaintiffs shall file with the Court and serve on Defendant, a notice advising of the expiration of the deadlines, the identity of the class members to whom notice was sent, the identity of the class members who are deceased, the identity of the class members who opted out of the settlement, and submit all written objections which may have been made. The list identifying class members shall be provided to the Court under seal to protect the privacy rights of individual Indians in the confidentiality of their account numbers and interest in the judgment.

Dated: March ¹⁹1, 2004

Assiniboine and Sioux Tribes of
the Fort Peck Reservation

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In the United States Court of Federal Claims

FILED
MAR 24 2004
U.S. COURT OF
FEDERAL CLAIMS

No. 773-87 L

(Filed: March 24, 2004)

ASSINIBOINE AND SIOUX TRIBES
OF THE FORT PECK RESERVATION,
ET AL.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER

Before the court unfiled is Parties' Joint Report to the Court and Request for Court Approval of the List of Individuals Eligible to Share in the Judgment (Report and Approval Request). The document is unfiled because the parties submitted only one paper copy of Exhibit B as the "originals" of that exhibit. However, the parties also submitted Exhibit B in CD Rom format. The parties have filed Exhibit B under seal. The Clerk of the Court shall file the Report and Approval Request, with Exhibit B (both the paper copy and the CD Rom) under seal.


The court also GRANTS the Approval Request, thereby approving:

- 1) the parties' requested proposed amendments to the January 2001 Stipulation (filed by the parties on March 19, 2004); and
- 2) the parties' list of individuals eligible to share in the judgment, along with each individual's percent share in the

judgment (Exhibit B).

The parties shall provide to the court signature copies of the notices as soon as practicable.

IT IS SO ORDERED.



EMILY C. HEWITT
Judge

In the United States Court of Federal Claims

No. 773-87 L

(Filed: August 6, 2004)

ASSINIBOINE AND SIOUX TRIBES)
OF THE FORT PECK RESERVATION,)
ET AL.,)

Plaintiffs,)

v.)

THE UNITED STATES,)

Defendant.)
_____)

FILED

AUG 6 2004

U.S. COURT OF
FEDERAL CLAIMS

ORDER

Further to the informal telephonic status conference held in this matter on August 5, 2004, the court VOIDS its order of August 3, 2004 and instructs the parties to destroy the originals of the executed notices that were appended to that order and which were provided to defendant's counsel. There was a material mistake in the text of one of the notices.

The court has now executed, in the form attached, notices to be sent to the class members in this case, the original of which the Clerk's Office is to hold for pick-up by counsel for defendant. These notices shall be mailed and published by the parties as contemplated in the notices and in prior proceedings in this matter. Defendant may pick up the originals of the notices at any time after 2 p.m., Friday, August 6, 2004.

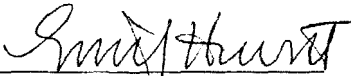
Further to the status conference held today, the court GRANTS the parties request for preliminary approval of the "corrected list of the individuals eligible to share in the judgment in this case," filed under seal on July 30, 2004 in the parties' Joint Report Filed Pursuant to the Court's Orders of July 23, 2004 and July 30, 2004 Submitting, for Court

EXHIBIT 8

Defendants' Motion for Expedited Clarification or, in the
Alternative, Modification of the December 23, 2002 Order to
Facilitate Implementation of Settlement in Assiniboine &
Sioux Tribes of the Fort Peck Reservation v. United States

Approval, the Corrected List of Individuals Eligible to Share in the Judgment. The Order of March 24, 2004, approving "the parties' list of individuals eligible to share in the judgment" which was filed on the same date, is thus SUPERSEDED in part by today's order approving the corrected list filed on July 30, 2004.

IT IS SO ORDERED.


EMILY C. HEWITT
Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ELOUISE PEPION COBELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 96-1285 (RCL)
)	
v.)	
)	
GALE A. NORTON, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

ORDER

Upon consideration of Defendants' Motion For Expedited Clarification Or, In The Alternative, Modification Of The December 23, 2002 Order To Facilitate Implementation Of Settlement In *Assiniboine & Sioux Tribes of the Fort Peck Reservation v. United States*, Dkt. _____, any response thereto, and the record in this case, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the December 23, 2002 Order, Dkt. 1692, previously entered in this matter does not prohibit Defendants from carrying out the terms of the court-approved settlement entered in *Assiniboine & Sioux Tribes of the Fort Peck Reservation v. United States*.

SO ORDERED this _____ day of _____, 2004.

ROYCE C. LAMBERTH
United States District Judge

cc:

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