Ramah Navajo Chapter v. Jewell Resolves Historic Contract Support Cost Lawsuit with Tribes

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WASHINGTON – The U.S. Department of Justice and the U.S. Department of the Interior (Interior) today announced a $940 million proposed settlement with a nationwide class of Native American Tribes and tribal entities that, if approved by the federal district court, would resolve a 25-year-old legal dispute related to contract support costs for tribal agencies. The proposed settlement would address claims that the United States contracted with tribes to run programs but did not pay the full amounts required by law.

> "This landmark settlement represents another important step in the Obama Administration's efforts to turn the page on past challenges in our government-to-government relationship with tribes," said Interior Secretary Sally Jewell. "Tribal self-determination and self-governance will continue to be our North Star as we navigate a new chapter in this important relationship and we are committed to fully funding contract support costs so that tribal contracting can be more successful. Congress can and should make this happen. Today's announcement resolves past claims and allows money wrapped up in litigation to be used more productively."

The proposed settlement, announced today by Interior Secretary Jewell, Assistant Secretary for Indian Affairs Kevin Washburn and Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division, would address claims that the government contracted with tribes and tribal agencies to run Bureau of Indian Affairs (BIA) programs like law enforcement, forest management, fire suppression, road maintenance, housing, federal education and other support programs, but failed to appropriate sufficient funds to pay the costs under the agreements. Native American tribal agencies manage these programs under the Indian Self-Determination Act of 1975.

> "The Department of Justice is pleased that the parties have reached an agreement to finally resolve this litigation that has spanned four administrations," said Principal Deputy Assistant Attorney General Mizer. "This agreement was long in the making – reached only after years of complex negotiations – and both sides can be proud of the result."

This proposed settlement was filed yesterday in U.S. District Court in Albuquerque, New Mexico, and will require court approval. The proposed settlement would resolve the government's liability and avoid years of tedious contract-by-contract litigation that would require tens of thousands of hours of work by federal and tribal attorneys as well as expert auditors and accountants.

The claims arose because of a mismatch between federal self-determination laws and available appropriations. While the federal government has signed contracts that provided for certain amounts to cover administrative costs of implementing contracts – such as workers' compensation costs for tribal employees – Congress capped appropriated funds available to pay for these costs. This funding gap was one of the sources of the claims, which were raised in a class action lawsuit filed in 1990.

> "Time and again, we have seen that when a tribal government runs a federal program, the program is more successful and more responsive to the tribal community," said Assistant Secretary Washburn. "Today's proposed settlement, together with President Obama's request for full, mandatory funding of tribal contract support costs in the future, removes one of the significant obstacles to tribal self-determination and self-governance. Tribes can now be confident that the federal government will pay sufficient costs to allow them to be successful in running federal programs."

In 2012, the issue reached the Supreme Court, which ultimately agreed with the Tribes that the government was liable for the payments, regardless of whether Congress had appropriated adequate funds. Since 2012, the United States has been negotiating with tribal entities to find a fair and efficient resolution of this dispute and to pay the money owed.

In the president's fiscal year 2016 budget request to Congress for the Departments of the Interior and Health and Human Services, the administration proposed a long-term solution to this persistent problem: mandatory, non-discretionary funding, beginning in fiscal year 2017, for contract support costs.

The proposed settlement marks another significant effort by the Obama Administration to address long-running litigation concerning federal policy in Indian Country, so that Tribes and the federal government can enjoy a more fruitful and constructive relationship in the future. Since 2010, the Departments of Justice and the Interior have settled the Cobell class action lawsuit, and more than 80 similar lawsuits brought by various American Indian tribes, alleging breach of trust for federal mismanagement of their financial assets and natural resources.
