



PAJARITO PLATEAU HOMESTEADERS CLASS ACTION LITIGATION

We are mailing the Supplemental Notice and Claim Form to Class Members on or before June 15, 2005. Claim Forms must be post-marked by July 15, 2005.

Relevant documents are attached below:

1. Statement of Terms and Conditions of Voluntary Dismissal
2. April 27, 2005 Order Approving Stipulation of Terms
3. May Order Appointing Special Master and Approving Claims Procedure
4. Claims Procedure
5. Class Counsel's May 29, 2005 Letter to Class Members
6. Supplemental Notice

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOSE E. GONZALES, PETER E. GOMEZ,
EMELINA GRANT, TERESITA GARCIA
MARTINEZ and MARIA ERNESTINA
MONTOYA,**

Plaintiffs,

No. 00-CV-60 WPJ/RS ACE

v.

**UNITED STATES OF AMERICA, and BILL
RICHARDSON, Secretary of the DEPARTMENT
OF ENERGY,**

Defendants.

No. 01-CV-588 MCA/RLP ACE

PAJARITO PLATEAU HOMESTEADERS, INC.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.

Defendants.

**ORDER GRANTING MOTION FOR FINAL APPROVAL OF THE
STATEMENT OF TERMS OF DISMISSAL**

THIS MATTER comes before the Court on Class Counsel's Motion for Preliminary and Final Approval of the Statement of Terms and Conditions of Voluntary Dismissal ("Statement of Terms of Dismissal") consistent with the Pajarito Plateau Homesteaders Compensation Act (Public Law

108-375, Sec. 3147) (“Legislation”) (Doc. 191) and Class Counsel’s Memorandum in Support of Final Approval (Doc. 249). The Court granted preliminary approval of the Statement of Terms of Dismissal by order dated February 1, 2005 (Doc. 193).

Having considered the above-referenced motion, the Statement of Terms of Dismissal, and the memorandum in support of final approval; the Legislation; all other relevant pleadings, including the affidavits of Class Counsel Gene Gallegos, Michael Gross, and Gregory M. Utter; the arguments of counsel for Plaintiffs and Defendants; and the absence of any objections by class members to the Legislation and the Statement of Terms of Dismissal; and based on the Court’s findings of fact and conclusions of law stated on the record at the hearing on the Motion of Terms of Dismissal held on April 25, 2005, the Court further finds and concludes that the Statement of Terms of Dismissal is fair, reasonable, adequate, and shall be approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

IT IS THEREFORE ORDERED that the Court has authority to approve the Statement of Terms of Dismissal based upon Rule 23(e) of the Federal Rules of Civil Procedure and the Legislation.


IT IS FURTHER ORDERED that the Statement of Terms of Dismissal are fair, reasonable, appropriate, and in the best interests of the Class and are hereby approved.

IT IS FURTHER ORDERED that acceptance of a disbursement from the Fund by an eligible claimant shall constitute a final and complete release of the defendants in this litigation and shall be in full satisfaction of any and all claims against the United States arising out of acts described in this

Litigation, and that upon disbursement of the amount in the Fund to eligible claimants entitled to recover and conclusion of the claims procedure, the Court will enter a final judgment dismissing with prejudice the litigation and all claims and potential claims on matters covered by the litigation.

IT IS FURTHER that the Court shall make the appointment of a special master on a timely basis consistent with Rule 53 of the Federal Rules of Civil Procedure and the Legislation.

IT IS FURTHER ORDERED that pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no just reason for delay and expressly enters this Order and Approving the Statement of Terms of Dismissal



UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOSE E. GONZALES, PETER E. GOMEZ,
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No. 01-CV-588 MCA/RLP ACE

PAJARITO PLATEAU HOMESTEADERS, INC.,

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Defendants.

ORDER APPOINTING SPECIAL MASTER (T.d. 258)

This matter comes before the Court for appointment of a Special Master. By separate order dated April 27, 2005 (T.d. 262), the Court approved the Statement of Terms and Conditions of Voluntary Dismissal consistent with the Pajarito Plateau Homesteaders Compensation Act (Public Law 108-375, Sec. 3147) ("Legislation"), which provides a legislative resolution to this litigation.

The Legislation created the Pajarito Plateau Homesteaders Compensation Fund (“Fund”) for: (1) the resolution of all claims of owners and descendents of Hispanic owners who owned land on the Pajarito Plateau that was allegedly taken by the United States during World War II; and (2) the payment of Class Counsel’s fees and costs for the representation of the class. Pursuant to the Legislation, the Court shall appoint a special master in accordance with Rule 53 of the Federal Rules of Civil Procedure to administer and distribute the Fund, and to specifically identify class members; receive claims from class members; determine eligible claimants from among the class members; resolve contests, if any, among claimants with respect to a particular eligible tract regarding the distribution of monies in the Fund with respect to that eligible tract; and address such other matters as the Court may order. In its April 27, 2005 Order, the Court indicated that it would make the appointment of a special master on a timely basis consistent with Rule 53 of the Federal Rules of Civil Procedure and the Legislation.

Class Counsel have filed a pleading entitled “Plaintiff Class’ Proposed Special Master” with a proposed special master (T.d. 258) which contained biographical information on Hon Joseph E. Caldwell, who they propose as a candidate for Special Master. Counsel for the defendants, by correspondence, have also recommended three potential special masters. The Court heard argument on the proposed special masters at the Fairness Hearing on April 25, 2005. All parties have been given the opportunity to be heard regarding the appointment of a special master. At the Court’s request, Judge Caldwell has also submitted additional information regarding compensation for his services as a Special Master and has confirmed that there are no grounds for disqualification under 28 U.S.C. §455, thereby satisfying Rule 53(B)(3) of the Federal Rules of Civil Procedure. Judge

Caldwell has also worked with Class Counsel and has proposed a Claims Procedure and Supplemental Notice and Claim Form to be mailed to all class members.

The Court has reviewed and considered the curriculum vitae and information provided. After careful consideration and review, given the duties and obligations of the special master in this case and the issues presented for resolution, the Court has decided to appoint Judge Joseph E. Caldwell as the special master in this litigation.

IT IS THEREFORE ORDERED that, pursuant to Rule 53 of the Federal Rules of Civil Procedure and the Legislation, the Court appoints Judge Joseph E. Caldwell as a special master to supervise a Claims Procedure in the above-referenced matter and to administer and distribute the Fund to Eligible Claimants consistent with the Legislation and the orders of this Court. The special master's duties are to proceed with all reasonable diligence to: (a) identify class members; (b) receive claims from class members so identified; (c) determine in accordance with subsection (d) eligible claimants from among class members so identified; (d) resolve contests, if any, among claimants with respect to a particular eligible tract, regarding the disbursement of monies in the Fund with respect to that eligible tract; and (e) address such other matters as the Court may order. The Special Master shall determine the appropriate amount individual Eligible Claimants are entitled to receive from the Fund. The special master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently these assigned duties. The special master may conduct evidentiary hearings and may exercise the power of the appointing court to compel, take, and record evidence and to impose upon a party a noncontempt sanction provided by Rule 37 or 45 and may recommend a contempt sanction against a party and sanctions against a nonparty.

IT IS FURTHER ORDERED that, consistent with the Legislation, Class Counsel shall provide evidence to the special master to assist the special master in the duties set forth above.

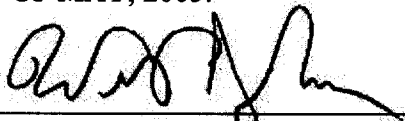
IT IS FURTHER ORDERED that the Claims Procedure and Supplemental Notice and Claim Form presented by Class Counsel and Judge Caldwell are approved.

IT IS FURTHER ORDERED that the Special Master shall have all investigative and enforcements authority consistent with the Legislation and the Claims Procedure to resolve all disputes among class members. The Special Master shall not have any ex parte communications with the Court. Consistent with the Legislation, the Special Master shall preserve all documents and records submitted and sent to class members in the Claims Procedure. The Court reserves the right to schedule future status conferences to obtain updated from Class Counsel and the Special Master on the progress of the Claims Procedure.

IT IS FURTHER ORDERED that compensation for the special master is to be paid from the Fund separate and apart from payments to eligible claimants and payments to Class Counsel for fees and costs. The special master shall be paid on an hourly basis of \$150.00. All compensation to be paid to the special master is subject to the discretion of the court, and no compensation shall be paid absent prior court approval.

IT IS FURTHER ORDERED that pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no just reason for delay and therefore enters this final order and judgment approving the Application.

IT IS SO ORDERED ON THIS 27th DAY OF MAY, 2005.


UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOSE E. GONZALES, PETER E. GOMEZ,
EMELINA GRANT, TERESITA GARCIA
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No. 01-CV-588 MCA/RLP ACE

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Defendants.

CLAIMS PROCEDURE

I. Initiation of the Claims Procedure

- A. The Claims Procedure will begin when the Supplemental Notice and Claim Form (substantially similar in form to Exhibit A) is mailed to Class Members as referenced below. The Special Master has no authority to hear, discuss, consider or rule upon a Class Member's potential recovery or dispute regarding a Settlement Class Member's potential recovery or to discuss any aspect of the Claims Procedure prior to the start of the Claims Procedure.
- B. On or before June 15, 2005, the Special Master, with the assistance of Class Counsel, shall mail the Supplemental Notice and Claim Form to all Class Members identified by Class Counsel.
- C. Claim Forms must be returned postmarked on or before July 15, 2005. The Special Master retains the discretion to accept or reject Claim Forms postmarked after July 15, 2005.



- D. Any conflict between this claims procedure and the governing statute, Public Law 108-275, section 3147, shall be resolved in favor of the statute.

The Special Master's contact information is the following:

Mailing Address: Hon. Joseph E. Caldwell, Special Master
Pajarito Plateau Homesteaders Compensation Fund
c/o Keating Muething & Klekamp, PLL
P.O. Box 492
Cincinnati, Ohio 45201-0492
Telephone 1- 800-708-6999
E-mail address PajaritoSettlement@kmklaw.com

II. Determination of Claims

A. Public Hearing.

No earlier than thirty (30) days, but no later than forty-five (45) days after the deadline for filing claims (July 15, 2005), the Special Master shall conduct a public hearing, at which the Special Master will:

1. Accept the map entitled "Real Estate Los Alamos Demolition Range, Los Alamos, New Mexico," that formed the basis for definition of the class; that identifies thirty-two (32) tracts of varying size with a combined total acreage of 2487.54 acres; and that specifies the "Eligible Tracts" in accordance with PL 108-375 Section 3147(i)(3)(A);
2. Acknowledge receipt of claim forms from class members;
3. Determine the criteria for those among class members who may be considered as potentially Eligible Claimants in accordance with PL 108-375 Section 3147(d);
4. Identify those Eligible Tracts (a) to which it appears there exists no contest among claimants as to eligibility and the right to disbursement of monies from the Fund; and (b) to which it appears there are contests among claimants;
5. Make an initial estimate of the amount per acre that will likely be disbursed for Eligible Tracts, after taking into account the deduction from the Fund for attorneys' fees, attorneys' expenses and the estimated expense for the Special Master to conduct the Claims Procedure; provided, that there will be a two phase distribution in order that the final payment will only take place after a final accounting of all allowed reductions of the Fund; and
6. Address any other matters that the Special Master deems necessary and appropriate.

B. Initial Findings and Decision.

Within fifteen (15) days from the close of Public Hearing, the Special Master shall issue Initial Findings and Decision for each Eligible Tract based on the information and documents submitted in the Claims Procedure, and will mail the Initial Findings and Decision to all persons who submitted Claim Forms. The decision shall address the following:

1. Non-contested Eligible Tracts:
 - a. The totality of the acreage in the tract or tracts;
 - b. The claimants who are eligible to receive distribution concerning a specific tract or tracts; and
 - c. The Special Master's recommendations about the first phase distribution, which shall be based upon a pro-rata share for each eligible claimant according to the allocation of the acreage of each eligible tract and the number of eligible claimants as to each tract.
2. Contested Eligible Tracts:
 - a. The identification of the Eligible Tracts about which there is a contest among claimants; and
 - b. Setting of the location, date and time when the Special Master shall receive evidence from claimants and resolve contests on a tract by tract basis concerning each Eligible Tract about which there is a contest, and providing a description of the hearing process consistent with paragraphs III(C)(3-8) of this Claims Procedure.

C. Disposition of Non-Contested Eligible Tracts and Contested Eligible Tracts

1. Any objection to the Special Master's Initial Findings and Decision must be submitted in writing within twenty days of the Initial Findings and Decision and must identify the basis of the objection and the claims of error. An objection may only be filed with respect to an Eligible Tract in which the objector claims an interest.
2. In the event no objection is raised to the determination of persons eligible for distribution based on an eligible tract, or after any revisions by the Special Master to resolve any objections or errors, the Court shall be requested to approve the Initial Findings and Decision filed by the Special Master. The approval of the Special Master's decision shall be considered final approval for the purpose of the disbursement of funds allocated for eligible tracts and eligible claimants not in dispute. No appeal of the Court's Order of Approval of non-contested claims may be taken.

3. For each Contested Eligible Tract where an objection is received, the Special Master shall proceed to hear evidence of the respective contested claims in a manner designed to provide due process and an opportunity to be heard to parties who have filed timely claims. Only those persons affected by the dispute or objection are required to participate. New Mexico law shall govern the determination of the eligible claimants.
4. For the purpose of such hearings, Class Counsel may not represent any class member or claimant as against another in the event of a dispute. The Special Master shall provide a hearing process which ensures the right of the contesting claimants to present evidence and argument about their claims, each side having the burden of proving by a preponderance of the evidence their respective claims.
5. If at any time during the contest process the Special Master should determine that a mediation of a dispute might be beneficial to the claimants, he may refer the matter to Special Magistrate Judge under the Jurisdiction of the Court for mediation. If the mediation is successful, the mediated agreement shall be incorporated in the Decision in reference to that tract. If the mediation is not successful, the Special Master shall proceed to hear and decide the matter.
6. Within fifteen (15) days from the close of the hearings on contested claims, the Special Master may request that the claimants submit findings for the Special Master's consideration. The Special Master shall thereafter file his Final Findings and Decision with the United States district court, giving notice to all the respective claimants of the filing. The notice will also explain to the respective claimants the procedure for submitting objections to the Court
7. Within twenty (20) days of the Special Master's decision objections may be filed with the Court. The Court will conduct a de novo review of the issues, unless the parties agree and stipulate, with the Court's approval, to the clear error standard of review provided for in Rule 53(g)(3)(A) of the Federal Rules of Civil Procedure. The Court may, in its discretion, remand the case to the Special Master for additional consideration and modification or supplementation of the Decision.
8. The Decision of the Court after review of the Special Master's Decision shall be a Final Judgment, subject to appeal only by a claimant in a contested claim, and only as to the portion of the Final Judgment that deals with that disputed claim and tract. For all those contested claims for which no appeal is taken according to law the Special Master may proceed to the distribution stage.

III. Final Distribution

- A. Once all appeals have been finalized and all Attorney's fees, expenses, charges for the services of the Special Master and eligible claimants have been determined, the Special Master may proceed to request Court approval for the second phase, final distribution.
- B. A Final Report and Accounting shall be submitted by the Special Master to the Court upon the close of all proceedings and the completion of his service.

May 29, 2005

Re: **Pajarito Plateau Homesteaders Class Action Litigation**
Civil No. 01-0588 (United States District Court, New Mexico)

I want to provide you an update in the above-referenced matter.

The fairness hearing on April 25, 2005 went very well. No one objected at the fairness hearing. The Court has approved the Legislation and the Statement of Terms of Conditions for Voluntary Dismissal that were outlined in the Class Notice. On May 27, 2005, the Court approved a claims procedure and formally appointed retired Judge Joseph E. Caldwell as a Special Master to administer the claims procedure and supervise distribution of the Fund.

On or before June 15, 2005, you will receive a Supplemental Notice and Claim Form that will contain information on the claims procedure, explain how to submit a claim, and identify what information you may need to provide to the Special Master.

On June 20, 2005, at 6:00 p.m., we will have another meeting (similar to our January meeting) at Alumni Hall, the College of Santa Fe, 1600 Michaels Drive, Santa Fe, New Mexico. We will discuss and answer questions, to the extent we can, regarding the claims procedure and claim form. The Special Master will also be present to answer questions. The meeting is informative only. You do not need to attend the June 20, 2005 meeting to recover from the Fund. No decisions will be made at this meeting regarding recovery from the Fund.

At this time, with the expectation that we will mail the Supplemental Notice and Claim Form on or before June 15, 2005, we hope that most of the Fund will be distributed in the claims procedure before the end of the year.

Please remember that receipt of a Supplemental Notice and Claim Form does not mean that you are automatically entitled to a share of the Fund. Only former owners of land on the ownership foundation map used in determining the make-up of the class at the time of the taking and their descendents, heirs, and assignees are entitled to a recovery from the Fund. New Mexico law on descent and distribution will govern. Absent special circumstances, children and grandchildren of living owners, descendents, heirs and assignees are not likely to recover.

Judy Espinosa has been working extremely hard over the past several months and we want to again thank her for her help. We would not be in this position today without her efforts.

We have obviously come a long way. We know that the process is slow but are confident it will be fair. If you have any questions in the meantime, please call 1-800-708-6999 or email us at PajaritoSettlement@kmklaw.com (and please do not call Judy or our co-counsel, Gene Gallegos and Mike Gross – we have agreed that it is our firm's responsibility in the division of attorney labor to communicate with you regarding the claims procedure). We will return your call or reply to your email at our earliest opportunity.

Very truly yours,

KEATING, MUETHING & KLEKAMP, P.L.L.

By: _____


Gregory M. Utter

c: J.E. Gallegos Michael P. Gross Joseph M. Callow, Jr. Matthew K. Buck