

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

DELAWARES OF IDAHO, INC., KANSAS  
DELAWARE TRIBE OF INDIANS, INC.,  
ARTHUR A. CREECH and WANDA JUNE  
WEEKS,

Plaintiffs,

v.

WILLIAM P. CLARK, Secretary of Interior  
of the United States of America,

Defendant.

Case No. 1:83-CV-01192-BLW

**STIPULATED MEMORANDUM  
DECISION AND ORDER**

Pending before the Court is a Joint Motion to Release Funds and Close Case filed by the remaining interested parties to the above captioned matter. *See* ECF No. 49. For the reasons outlined below, the motion is granted. The Clerk of the Court shall disburse remaining funds held by the Court to the Delaware Tribe of Indians as outlined herein.

**BACKGROUND**

In 1983, the Idaho and Kansas Delawares, representing their enrollees, sued the United States Department of the Interior (Interior or United States) alleging underpayment of funds owed to tribal members under Public Law 96-318. *See* ECF No. 17 at 1 (Status Report on Compliance with Court's Order); ECF No. 49 (Joint Motion to Release Funds). As part of that litigation, the United States acknowledged that it owed monies to enrollees or members of three tribal entities that descend from the historic Delaware Nation: the Idaho Delawares, the Kansas Delawares, and the Delaware Tribe of Indians. On October 2, 1984, the United States District

Court for the District of Idaho entered judgment and ordered the United States to pay monies to enrollees and members of the three tribal entities. ECF No. 17 (“1984 Judgment”) at 1-2 and Attachment A.

The United States did not timely fulfill its payment obligations under the 1984 Judgment. *See* ECF No. 17 at 1-2 (Status Report on Compliance with Court’s Order). However, after the parties and the Court recalculated the amounts owed by the United States in 2006, the Court Ordered, and the United States paid in full, the following amounts into three separate interest bearing accounts supervised by the District Court:

- \$182,194.53 to 234 Kansas Delawares born after October 3, 1972;
- \$45,157.20 to 58 Idaho Delawares born after October 3, 1972; and
- \$1,186,964.08 to 1,372 Cherokee Delawares<sup>1</sup> born after October 3, 1972.

*See* ECF No. 30 at 1-2 (Final Order of October 31, 2006); ECF No. 31 (Order of December 7, 2006) (noting that the United States had paid the Judgment in full).

After the United States paid the judgment in full, the three relevant tribal entities began submitting names to the Court for payment. As of April 16, 2010, final distributions had been made to the Idaho Delawares and the Kansas Delawares, thus resolving the matter as to those entities. *See* ECF No. 38 (Order for Release of Funds to Idaho Delawares); ECF No. 39 (Docket entry closing matter as to the Kansas Delawares). Since April of 2010, the only remaining issue has been ensuring final and just distribution to the Delaware Tribe of Indians and its members.

On July 11, 2019, the remaining parties filed the pending Joint Motion to Release Funds and Close Case so as to resolve the matter as to the Delaware Tribe of Indians. ECF No. 49.

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<sup>1</sup> The Court’s Order of October 31, 2006, referred to the third tribal entity as the “Cherokee Delawares,” consistent with the 1984 order. The proper reference, however, should be to the “Delaware Tribe of Indians,” as the Tribe is formally recognized by the United States.

**ORDER RELEASING REMAINING FUNDS TO  
THE DELAWARE TRIBE OF INDIANS**

The Court finds that the Delaware Tribe of Indians has made significant and reasonable efforts to find eligible members since 2007, including submitting lists of names to the Court on December 19, 2007, July 22, 2008, and June 30, 2012.

Of the original 1,372 Delaware Tribe of Indians members eligible for payment under the Order of October 31, 2006, the Tribe has submitted to the Court names and addresses for 1,196 members (87% of the original 1,372 eligible members). Of those 1,196 names submitted to the Court, 1,110 members have been successfully paid (81% of the original 1,372 eligible members). For the other 86 names submitted to the Court, the Court attempted payment but was ultimately unsuccessful, usually because the tribal member moved or the address was not correct. The Delaware Tribe of Indians has been unable to locate addresses or heirs for approximately 176 of the original eligible members.

A summary of the payment status for eligible Delaware Tribe of Indian members is in the table below.

**Summary of Payment Status for Eligible Delaware Tribe of Indian Members**

Total Members Eligible	1,372	
Member Names Sent to Court for Payment since 2007	1,196	87% (of 1,372)
Members Successfully Paid	1,110	81% (of 1,372)
Members Payment Unsuccessful	86	6% (of 1,372)
Members not paid (because they were never found)	176	13% (of 1,372)
Members not paid (total)	262	19% (of 1,372)

In addition to the Court's finding that the Tribe has made significant and reasonable efforts to locate members for payment, the Court finds, consistent with the Joint Motion to Release Funds (ECF No. 49), that it is now in the best interest of those involved if the Court releases the remaining funds to the Delaware Tribe of Indians for the purposes outlined in Tribal Resolution 2019-31. *See* Attachment A to ECF No. 49. This is in part because it is increasingly difficult to find eligible members, and increasingly likely that not all eligible members will ever be found. Release of the remaining funds to the Delaware Tribe of Indians in this context will allow the Tribe to make use of remaining funds to benefit all tribal members, something that would not be possible if the Court simply retained control of the funds in perpetuity. This result is consistent with the Court's distribution to the Kansas Delawares in 2009, *see* ECF No. 38, as well as with Public Law 96-318 Sections 7(e) and (f), and 25 U.S.C. § 164.

### **ORDER**

For the reasons noted above and good cause appearing,

NOW THEREFORE IT IS HEREBY ORDERED that the parties' Joint Motion to Release Funds and Close Case (ECF No. 49) is GRANTED;

IT IS FURTHER ORDERED that

- (1) The Clerk of the Court shall disburse all remaining funds held for members of the Delaware Tribe of Indians to the Delaware Tribe of Indians itself, to be arranged in an appropriate manner by the Clerk and Tribal Counsel Thomas Peckham;
- (2) The Delaware Tribe of Indians shall use the funds disbursed to it in the manner outlined in the Joint Motion to Release Funds (ECF No. 49), specifically:
  - a. To pay any additional eligible members or heirs located within one year of the Court distributing remaining funds to the Tribe; and then,
  - b. To help fund Tribal programs dedicated to:
    - Tribal elder assistance and/or
    - Tribal higher education scholarships

(3) After distribution of the remaining funds, this matter shall be closed as to the Delaware Tribe of Indians. Closing the matter as to that Tribe will finally and fully resolve the above captioned case.



DATED: July 19, 2019

*B. Lynn Winmill*

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B. Lynn Winmill  
United States District Judge