

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

CIV09-5045-JLV

Plaintiff,

v.

MOTION TO DISMISS

OGLALA SIOUX TRIBE, a federally
recognized Indian tribe,

Defendant.

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson and Assistant United States Attorney Diana Ryan, and hereby moves the court to enter an order dismissing the case without prejudice.

The resolution set forth in the stipulation for compromise settlement, clerk's docket entry ("DE") 43, is conditioned upon the defendant, Oglala Sioux Tribe, meeting particular requirements pertaining to its accounting system, which include keeping a separate set of fund accounts for each federal grant or contract, and not commingling federal funding unless specifically authorized to commingle funding by the granting agency and the applicable law. *See*, DE 43, ¶8, subparts A-H. If the Oglala Sioux Tribe fails to abide by those conditions, it shall be in material breach of the settlement and the United States will be

entitled to liquidated damages. *Id.*, ¶9. For that reason, the United States requests that the dismissal in this case be without prejudice to this case being re-opened in the event there is a breach of the settlement agreement and the United States brings an action as set forth in DE 43, ¶¶13-14.

Date: September 26, 2011 BRENDAN V. JOHNSON
United States Attorney

/s/ Diana Ryan

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CERTIFICATE OF SERVICE

I, Diana Ryan, do hereby certify that on September 26, 2011, I caused copies of the foregoing to be served upon the following:

MARIO GONZALEZ
PATRICIA MARKS

- US mail
- FedEx
- ECF
- hand delivered
- faxed

/s/ Diana Ryan

DIANA RYAN