

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,)
 as the representative of the COLVILLE, LAKE,)
 SAN POEILS, NESPELEM, OKANOGAN, AND METHOW)
 TRIBES.)
 LOUIE CAMILLE AND PETER J. GUNN, as the represent-)
 atives of the COLVILLE TRIBE,)
 PETE LEMERY AND FLORENCE QUILL, as the represent-)
 atives of the LAKE TRIBE,)
 ALEX L. COVINGTON AND LEWIS H. RUNNELS, as the repre-)
 sentatives of the SAN POEILS TRIBE,)
 EDDIE YERACOSTCHIN AND ED HILAKAHN, as the represent-)
 atives of the NESPELEM TRIBE,)
 ALEX NICHOLSON AND NARCISSE BROOKS, as the represent-)
 atives of the OKANOGAN TRIBE,)
 SAM MILLER AND MICHEL CHARLEY, as the representatives)
 of the METHOW TRIBE,)
 THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,)
 as successor to the claims of the COLVILLE,)
 LAKE, SAN POEILS, NESPELEM, OKANOGAN, AND)
 METHOW TRIBE,)

Docket No. 181

Petitioners,)

v.)

THE UNITED STATES OF AMERICA)

Defendant.)

Decided: March 1, 1960

FINDINGS OF FACT AS TO PROPOSED COMPROMISE SETTLE-
MENT OF OFFSETS, AND AWARD OF ATTORNEYS' FEES.

The Commission has previously in this docket made and entered Findings of Fact No. 1 to 42 inclusive on February 29, 1956 (4 Ind. Cl. Comm. 151) and No. 43 to 73 inclusive on March 5, 1959 (7 Ind. Cl. Comm. 187), and now makes the following additional findings of fact:

74. On January 19, 1960 the parties herein filed with the Commission a Joint Motion for Entry of Final Judgment, based upon a Stipulation for Entry of Final Judgment made and executed by I. S. Weissbrodt, Attorney of Record for Petitioners, Perry W. Morton, Assistant Attorney General, and John D. Sullivan, Attorney for Defendant, which provides as follows:

It is hereby stipulated between counsel for the parties that the above-entitled case shall be settled and finally disposed of by entry of final judgment, as follows:

1. There shall be set off against the interlocutory judgment entered by the Commission on March 5, 1959, offsets in the aggregate sum of \$61,000.00, said \$61,000.00 to be allocated as hereinafter set forth, and final judgment shall be entered in favor of the tribes of the Colville Reservation hereinafter named, in the following net sums:

Colville Tribe, \$111,000.00 less the offset of \$6,400.00, that is, the net sum of \$104,600.00;

San Poil-Nespelem Tribe, \$436,000.00 less the offset of \$25,100.00, that is, the net sum of \$410,900.00;

Okanogan Tribe, \$237,000.00 less the offset of \$13,600.00, that is, the net sum of \$223,400.00;

Methow Tribe, \$152,000.00 less the offset of \$8,700.00, that is, the net sum of \$143,300.00;

Lake Tribe, \$125,000.00, less the offset of \$7,200.00, that is, the net sum of \$117,800.00

2. Entry of final judgment on this basis shall finally dispose of all rights, claims or demands which petitioners have asserted, or could have asserted, with respect to the subject matter of this case, and petitioners shall be barred thereby from asserting any such right, claim or demand against defendant in any future action.

3. Entry of final judgment on this basis shall finally dispose of all rights, claims, demands, payments on the claim,

counterclaims or offsets which the defendant has asserted or could have asserted, against petitioners under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049) for the period July 2, 1872 to June 30, 1957, inclusive, and defendant shall be barred thereby from asserting any such rights, claims, demands, payments on the claim, counterclaims or offsets against petitioners in any future action. The offsets referred to specifically include those for the period July 2, 1872 to June 30, 1957, which are directly chargeable to the above listed tribes and also those portions of disbursements made for the benefit of Indians of the Colville Agency or of the Colville Reservation which are allocable to the above listed tribes. The bar against future claims by the United States for offsets, gratuities and counterclaims allowable under Section 2 of the Indian Claims Commission Act shall not apply to those which may have occurred prior to July 2, 1872, or to those which may accrue subsequent to June 30, 1957.

The final judgment, entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission of either party, for purposes of precedent or argument, in any other case.

5. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination of the case by the Commission, and shall become final on the day it is entered, the parties hereto hereby waiving any right to appeal from or otherwise seek review of, such determination.

6. Counsel for the parties shall execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of order of final judgment for approval by the Commission.

75. At an open hearing before the Commission on February 12, 1960, oral and documentary evidence was received showing approval of the stipulation and proposed settlement by the petitioners and by the Commissioner of Indian Affairs.

Resolutions of the Colville Business Council of the Confederated Tribes of the Colville Reservation, shown by the Constitution and By-laws (Exhibit E) to be the governing body of said Confederated Tribes, are in evidence as Exhibits F, G and H, which approve the proposed

settlement of offsets and authorize the Chairman of the Colville Business Council to execute the stipulation on behalf of the Confederated Tribes of the Colville Reservation. A duplicate copy of the stipulation signed by the Chairman is Exhibit F (3). The action of the Business Council appears to have been unanimous. Their action was authorized by a unanimous vote of the tribal members present at a general meeting of the tribes held at the town of Nespelem, Washington on November 7, 1959.

Exhibits M and N certify as to the death of individual petitioners Peter J. Gunn, Eddie Yeracostchin, Alex Nicholson, Narcisse Brooks and Sam Miller. Surviving individual petitioners who have signed duplicate copies of the stipulation are: Louie Camille, as a representative of and in behalf of all the members of the Colville Tribe (Exhibit O); Alex L. Covington, Lewis N. Runnels and Ed Hilakahn, each as a representative of and in behalf of all the members of the Sanpoil-Nespelem Tribe (Exhibit P); Pete Lemery and Florence Quill, each as a representative of and in behalf of all the members of the Lake Tribe (Exhibit R); and Michel Charley, as a representative of and in behalf of all the members of the Methow Tribe (Exhibit S). Willie Nicholson, son of Alex Nicholson, deceased, and Dick Simon Brooks, son of Narcisse Brooks, deceased, sign as representatives of and in behalf of all the members of the Okanogan Tribe (Exhibit Q).

All the attorneys for the petitioners who have or have had some interest in the litigation, as shown by the Attorneys' Contract with amendments (Exhibit T), have either signed the original stipulation or duplicate copies thereof. The signed copies are now on file with the

Commission as Exhibits J, K and L.

The exhibits have been satisfactorily certified and authenticated.

76. The Attorneys' Contract of the petitioners' attorneys provides that said attorneys in the performance of their duties shall be subject to the supervision and direction of the Commissioner of Indian Affairs and the tribes, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of the Commissioner of Indian Affairs and the tribes. Such approval of the proposed settlement herein is contained in a letter (Exhibit D) dated January 5, 1960 from Glenn L. Emmons, Commissioner, Bureau of Indian Affairs, United States Department of the Interior, to Cobb and Weissbrodt.

The letter reviews the efforts to effect a settlement of offsets in the total sum of \$61,000 so as to leave a net judgment of \$1,000,000 for the tribes, and concludes as follows:

We have carefully reviewed and considered your statements contained in your report of September 16, 1959, to the Confederated Tribes and the resolutions adopted by the Colville Business Council on November 20, 1959 and November 27, 1959, after the matter was fully discussed in a mass meeting on November 7, 1959. In view of the statements contained in your comprehensive report to the tribes and the action of the tribes in approving the proposed compromise settlement, we hereby give approval to your entering into a stipulation with the Department of Justice to compromise the offsets in Docket No. 181 upon the conditions outlined in your letter of September 11, 1959, to that Department.

77. Harvey Moses, Chairman of the Colville Business Council, and Nellie Rima, Secretary, testified at the hearing.

Harvey Moses testified that he is a full blooded Indian, is 39 years of age, and resides within the Colville reservation at Nespelem, Washington. He has a high school education and, in addition to English,

understands the native languages of all of the tribes in this docket. As a rancher, he raises cattle. He is a veteran of the second world war and a member of the public school board of his district. During his six years as a member of the Council, he has been vice chairman for two years and chairman for the past three years.

Harvey Moses further testified that he is personally acquainted with most of the members of the Confederated Tribes; that he presided at a mass meeting of November 7, 1959, which was well advertised; that the settlement was fully explained to them, and the Indians and their Council members participated in the discussion, using both the English and Indian languages; that he also attended a number of informal and regional meetings at which the matter was considered; that he understands that this is a final settlement of the claim in this docket; that he feels the settlement is fair and reasonable; and that the Indians, in giving their consent and approval, have voluntarily acted without pressure of an economic or official nature.

Nellie Rima testified that she is a housewife, one quarter degree Indian of the Lake Tribe, and lives on the Colville Reservation. She has a high school education, operated a grocery store at one time, and has been on the school board at Nespelem for the past twelve years and clerk of the board for about fifteen years. This is her fifth year as Secretary of the Colville Business Council and her sixth year as a member of the Council.

Nellie Rima further testified that she was present at the mass meeting and the meetings of the council; that the proceedings were taken

down by the clerk; that she has discussed this settlement with the Indians; that there is a rather general understanding of what is proposed among all the Indians; that she does not know of any group or faction or any individuals who are opposed to the settlement; and that she and the other Indians are of the opinion that this is a fair and reasonable settlement.

78. At said hearing counsel for the petitioners and defendant expressed their opinions that the proposed settlement was fair to both the petitioners and defendant.

At least one of the attorneys for the petitioners was present at most of the meetings held by the Indians at which the proposed settlement was explained and discussed. In addition, Cobb and Weissbrodt made a written report to the Confederated Tribes, dated September 16, 1959, containing a comprehensive discussion of the prosecution of the claim in this docket and the merits of the proposed settlement. The report is not in evidence because it is a privileged communication between attorney and client, but a copy has been furnished the Bureau of Indian Affairs and it is referred to in the Commissioner's letter of January 5, 1960.

In reaching their conclusion that the sum of \$61,000.00 is a reasonable and just settlement of offsets, counsel for the parties have studied and analyzed statements and information from the General Accounting Office showing disbursements by the United States for the Indians of the Colville Reservation between July 2, 1872 and June 30, 1957 in the total amount of \$2,394,874.00, in the light of the Statutes

of the United States and decisions of the Commission and the United States Court of Claims. The allocation of offsets between the tribes is based upon a mathematical computation of each tribes' share of the total recovery herein.

79. From the entire record the Commission finds that the compromise agreement as set out in the Stipulation for Entry of Final Judgment has been carefully and fully presented to the Indians who are petitioners herein and has been freely and voluntarily approved by them, and that the said compromise agreement under all the circumstances is fair and just to the petitioners and defendant.

80. The Commission further finds that Lyle Keith and Patrick H. Winston of Spokane, Washington, and David Cobb, Abe W. Weissbrodt and I. S. Weissbrodt of Washington, D. C., are the attorneys who are presently parties to the Attorneys' Contract with amendments (Exhibit T) with the Confederated Tribes of the Colville Reservation and that James E. Curry of Washington, D. C., was a party to the original contract; that said attorneys have performed legal services for the petitioners in this litigation for which they are to receive by the terms of said contract a fee of ten percent (10%) of the net recovery herein of \$1,000,000.00, being the sum of \$100,000.00, less the amount of \$30,000.00 which has already been paid to the attorneys under the contract, leaving a net sum of \$70,000.00 payable to the attorneys from the respective awards herein as follows:

420

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8 Ind. Cl. Com.

Colville Tribe	\$ 7,322.00
San Poil-Nespelem Tribe	28,763.00
Okanogan Tribe	15,638.00
Methow Tribe	10,031.00
Lake Tribe	<u>8,246.00</u>

Total \$70,000.00

which award and division of attorneys' fees has been approved by the Business Council of the Confederated Tribes of the Colville Reservation by resolution of January 14, 1960, a copy of which is attached to the Petition of Attorney of Record for Award of Attorneys' Fees and is in evidence as Exhibit U.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner

Arthur V. Watkins
Associate Commissioner